

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X	<b>Docket#</b>	
UNITED STATES OF AMERICA,	:	08-cr-906 (KAM) (JO)
	:	
- versus -	:	U.S. Courthouse
	:	Brooklyn, New York
KEMO SYLLA,	:	
	:	March 2, 2011
Defendant	:	
-----X		

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING HEARING  
BEFORE THE HONORABLE KIYO A. MATSUMOTO  
UNITED STATES DISTRICT JUDGE

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## Proceedings

1 THE CLERK: This is Criminal Cause for a  
2 Sentencing, 08-CR-906, United States v. Kemo Sylla.

3 Please state your appearances?

4 MR. SINCLAIR: Good afternoon, Judge.

5 Patrick Sinclair for the government. I am  
6 joining at counsel table by Jason Gummer (ph.), an intern  
7 in our office.

8 THE COURT: Good afternoon.

9 MR. MARGULIS-OHNUMA: Zachary Margulis-Ohnuma  
10 at 260 Madison Avenue. I'm joined at counsel by my  
11 associate Celia Castro.

12 THE COURT: Good afternoon.

13 MR. MARGULIS-OHNUMA: And my client and an  
14 interpreter.

15 Good afternoon, Judge.

16 THE COURT: All right. Good afternoon. Thank  
17 you.

18 I'll have the interpreter please rise and state  
19 his name for the record. If you can -- sir, you can sit  
20 and just speak close to the microphone because we don't  
21 have a court reporter today.

22 THE INTERPRETER: Okay.

23 THE COURT: If you would raise your right hand  
24 and take an oath, I'd appreciate it. Thank you.

25 (INTERPRETER SWORN)

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1 THE COURT: Thank you, sir. And let me ask,  
2 Mr. Sylla to also take an oath, please. Sir, raise your  
3 hand.

4 K E M O S Y L L A ,

5 called as a witness, having been first duly sworn,  
6 was examined and testified as follows:

7 THE COURT: All right. Thank you. And good  
8 afternoon.

9 I have reviewed the plea that's dated March 29,  
10 2010, the presentence report dated August 12, 2010, as  
11 well as government's objections to the presentence report  
12 dated August 23, 2010 and an addendum -- the first  
13 addendum to the presentence report dated September 3rd.

14 I've also reviewed the defendant's objections  
15 to the presentence report dated September 15th, 2010 and  
16 the second addendum to the presentence report based on  
17 those objections dated October 8, 2010.

18 At the request of Mr. Sylla and his co-  
19 defendants, Mr. Doumbouya and Mr. Diane, I held a Fatico  
20 hearing in this case on October 13th, 15th and 21st,  
21 2010. In connection with the Fatico hearing, I heard  
22 testimony from -- am I going too fast, sir?

23 THE INTERPRETER: No, no, your Honor.

24 THE COURT: Okay. In connection with the  
25 Fatico hearing, I heard testimony from Philip Alegranti,

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1 Special Agent of the United States Fish and Wildlife  
2 Service, Michael Oliver, an expert qualified by the Court  
3 to testify about the market value of African art,  
4 Fernando Peraja, an employee of Velocity Freight  
5 Services, a freight forwarding company at JFK Airport and  
6 defendant Kemo Sylla.

7 I've also reviewed all of the pre and post-  
8 Fatico submissions including the pre-Fatico hearing  
9 submissions by the government dated September 23rd and  
10 October 4th, 2010 and by Mr. Margulis-Ohnuma dated  
11 September 24th and October 1st, 2010.

12 I've also reviewed the exhibits attached to  
13 each of those submissions including the video depositions  
14 of Mfopa Yacouba.

15 I've also reviewed the transcripts from the  
16 Fatico hearing and the exhibits admitted into evidence at  
17 the Fatico hearing and the 3500 material that was made  
18 available.

19 I've also reviewed a sentencing memorandum from  
20 Mr. Margulis-Ohnuma dated December 30th, 2010 and  
21 attached letters written by Mr. Sylla's father, the  
22 mother of Mr. Sylla's daughter, and Mr. Sylla's cousin  
23 and friends. I've also reviewed a sentencing letter from  
24 the government dated January 20th, 2011 and the attached  
25 exhibits and a sentencing reply from Mr. Margulis-Ohnuma

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1 dated January 27th, 2011.

2 Have I overlooked any submissions, counsel?

3 MR. SINCLAIR: Nothing, your Honor.

4 THE COURT: Mr. Ohnuma?

5 MR. MARGULIS-OHNUMA: You have not, your Honor.

6 I don't think that I received a copy of the October 28,  
7 2010 addendum addendum to the PSR addressing my  
8 objections. At least, I don't have it with me. It  
9 wasn't in the file.

10 THE COURT: Let me just make sure. Hang on one  
11 second.

12 (Pause)

13 THE COURT: Let me see if we can make that  
14 available to you, sir.

15 MR. MARGULIS-OHNUMA: Thank you, your Honor.

16 THE COURT: Just one minute.

17 MR. MARGULIS-OHNUMA: I'm sorry about that.

18 (Pause)

19 THE COURT: Did you say October -- I don't --

20 MR. MARGULIS-OHNUMA: The October 8, 2010 (sic)  
21 because I know you mentioned addressing my objections.

22 THE COURT: Oh, I'm sorry, just one second.

23 (Pause)

24 THE COURT: All right. I'm sorry, sir. I  
25 misspoke about the date. The second addendum was dated

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1 November 23rd, 2010. I apologize. I don't have one for  
2 October 8th.

3 MR. MARGULIS-OHNUMA: I don't think I have that  
4 either. That specifically -- I have one addendum that's  
5 dated at the bottom September 3, 2010 and it only  
6 addresses the government's objections.

7 THE COURT: All right. Let me make my copy and  
8 then we'll continue.

9 MR. MARGULIS-OHNUMA: Thank you, your Honor. I  
10 apologize for that oversight.

11 THE COURT: It attaches your letter dated  
12 September 15th. So, I'll just keep that off since you  
13 have it. All right.

14 Just for the record, it is -- the addendum is a  
15 second addendum and it's dated October 8th and the reason  
16 I got confused with that November 23rd is that was the  
17 original sentence date.

18 (Pause)

19 MR. MARGULIS-OHNUMA: That's fine, Judge. The  
20 only outstanding issues that are left for you to be  
21 resolved, would be the Fatico evidence in any event. So,  
22 I've now reviewed this submission and I have nothing  
23 further.

24 THE COURT: All right. You're free to hold  
25 onto it if you would like. Okay?

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1 MR. MARGULIS-OHNUMA: Thank you, Judge.

2 THE COURT: All right.

3 Has Mr. Sylla had the opportunity to review the  
4 presentence report with you?

5 MR. MARGULIS-OHNUMA: Yes, your Honor.

6 THE COURT: And did he have any difficulty  
7 understanding the contents of that report, sir?

8 MR. MARGULIS-OHNUMA: We've reviewed it  
9 together and after I explained it, there was no  
10 difficulty understanding it.

11 THE COURT: Thank you.

12 Mr. Sylla, are you ready to be sentenced, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: Because Mr. Sylla is not a United  
15 States citizen, he does have the right to have his  
16 national consulate notified regarding his arrest and have  
17 officers of his consulate assist him. Now I note that he  
18 is characterized as an illegal alien who has removable  
19 proceedings pending as of February 26, 2009. However,  
20 Mr. Sylla is on release on an immigration bond in the  
21 amount of \$15,000 and he is also described as an asylum  
22 seeking refugee on immigration parole.

23 And that there is a pending application in 2004  
24 under which Mr. Sylla requested a deferred enforcement  
25 departure based on his Liberian status as a claimed

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1 refugee. And there is a provision for temporary  
2 protected status in the United States for such  
3 individuals.

4 But the point is, does Mr. Sylla wish to have  
5 his consulate informed or --

6 MR. MARGULIS-OHNUMA: No, your Honor, he's  
7 going to waive his right to --

8 THE COURT: Okay.

9 MR. MARGULIS-OHNUMA: -- for that.

10 THE COURT: All right. Thank you.

11 Mr. Sylla, sir, are you satisfied with your  
12 attorney's representation of you?

13 THE DEFENDANT: Yes.

14 THE COURT: Are there any unresolved conflicts,  
15 Mr. Margulis-Ohnuma or motions or contentions, conflicts  
16 or other issues between you and your client?

17 MR. MARGULIS-OHNUMA: No, your Honor.

18 THE COURT: Mr. Sylla does appear to be fully  
19 aware of these proceedings and to be following closely.  
20 Would you agree with that observation, sir?

21 MR. MARGULIS-OHNUMA: Yes, your Honor.

22 THE COURT: And do you know of any reason why  
23 Mr. Sylla should not be sentenced today?

24 MR. MARGULIS-OHNUMA: No, I do not, your Honor.

25 THE COURT: All right. And I would like to



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1 confirm with Mr. Sinclair on behalf of the government  
2 that there are not human victims associated with this  
3 offense. So, we need not address restitution; correct?

4 MR. SINCLAIR: That's correct, your Honor.

5 THE COURT: Now, sir, we are making a recording  
6 of this proceeding. It will be transcribed and made part  
7 of the Court record, so that if you wish to utilize it on  
8 any appeal, it will be available.

9 Does Mr. Sylla wish to contest the plea that he  
10 entered on March 29, 2010?

11 MR. MARGULIS-OHNUMA: No, your Honor.

12 THE COURT: All right. Mr. Sylla, you may  
13 recall I put you under oath to tell the truth at your  
14 plea and I then asked you questions about your  
15 understanding of your rights and the consequences of your  
16 plea.

17 In addition, sir, I did ask you what you did in  
18 connection with the offense to which you pled guilty and  
19 you did give me responses.

20 You may recall also that I asked you whether  
21 any promises or threats were made to cause you to plead  
22 guilty and in response, you answered no.

23 Mr. Sylla, were your answers to my questions at  
24 your plea truthful?

25 THE DEFENDANT: Yes, your Honor.

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1           THE COURT: All right. Now, Mr. Sylla, I have  
2 reviewed the transcript of your plea and I previously  
3 determined that your waiver of indictment and your guilty  
4 plea on March 29th, 2010 to a felony violation of the  
5 Lacey Act was knowing and voluntary and based upon a full  
6 understanding of your rights and the consequences of your  
7 plea. And that there was a factual basis for your plea.

8           I, therefore, did accept your plea of guilty to  
9 the superseding information which charged that on or  
10 about and between March 21st, 2006 and December 2nd,  
11 2008, that you knowingly within the Eastern District of  
12 New York and elsewhere, imported, transported, sold,  
13 received, acquired and purchased wildlife with a market  
14 value in excess of \$350, specifically African elephant  
15 ivory knowing that that wildlife was possessed and  
16 transported in violation of Title 16 USC Section 1538(c)  
17 and 4223, Title 18 USC Sections 545 and Title 50, Code of  
18 Federal Regulations Part 23.

19           Mr. Sylla allocuted at his plea that between th  
20 approximate dates of March 21, 2006 and December 2, 2008,  
21 he purchased African elephant ivory worth more than \$350  
22 within the United States knowing that the ivory he  
23 purchased was imported into the United States in  
24 violation of federal law and knowing that the purchase of  
25 ivory was in violation of federal law.

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1           The government proffered that the ivory was  
2 imported through JFK Airport in Queens, New York and Mr.  
3 Sylla did waive any objections to venue.

4           Mr. Sylla also agreed to forfeit the items set  
5 forth in his plea agreement and in the superseding  
6 information during his allocution, including any  
7 ownership interest he may have in ceratin pieces of  
8 ivory, and in addition, one lot of uncut rough diamond  
9 crystals totaling 17.55 carats in weight and two stones  
10 determined not to be diamonds, with a wholesale value of  
11 \$10,500.

12           The parties requested and the Court conducted a  
13 Fatico fact finding hearing at which the parties offered  
14 evidence relevant to sentencing.

15           Now, Mr. Sylla, you do have the right to  
16 address me personally and if you wish to exercise that  
17 right, you may do so now.

18           THE DEFENDANT: I just want to tell you, your  
19 Honor, I'm very sorry what I did; was wrong.

20           THE COURT: All right. Thank you. Thank you,  
21 Mr. Sylla.

22           Mr. Margulis-Ohnuma, I did read your  
23 submissions carefully and I would be happy to hear from  
24 you now if you would like. I'm not telling you, you know  
25 -- I mean, I've read your submissions and I just want you

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1 to know that I'm familiar with what you've submitted.

2 MR. MARGULIS-OHNUMA: Okay. I really do  
3 appreciate that, your Honor. I do want to make a few  
4 remarks and I will try not to repeat what's said there  
5 and I hope you will indulge me if there's a little bit of  
6 cross-over but I will try to avoid that.

7 I've been with this case for two years -- more  
8 than two years -- two and a quarter years when Mr. Sylla  
9 was first arrested and he was released from jail about  
10 four months later. And from the beginning he maintained  
11 to me that he was an art dealer. That he dealt in some  
12 art but that he never smuggled ivory. That he had bought  
13 some ivory and sold some ivory but that he was not an  
14 ivory smuggler.

15 And what I'm here to argue and point out is  
16 that in the face of a really impressive government  
17 investigation, pervasive -- I think it looks like we have  
18 six or seven Fish and Wildlife Service agents with us  
19 here today for sentencing, they had years and years to  
20 investigate this. For some reason, they latched on at  
21 the beginning and believed that Kemo Sylla was some sort  
22 of big-time ivory smuggler but the facts just didn't bear  
23 that out and I'll go through some of that a little bit  
24 more specifically.

25 What Kemo Sylla did was he bought knowing --

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1 bought ivory knowing that it had been smuggled and that  
2 was wrong. He's acknowledged that it was wrong. He's  
3 acknowledged that from the beginning essentially.

4           It's important to point out that the government  
5 brought smuggling charges against Kemo Sylla and agreed  
6 to let him plead to lesser charges, of possession of  
7 smuggled ivory.

8           Let me -- I have a few general comments and a  
9 few more specific comments to flush out what I just said.  
10 Before I get to that, let me just introduce the people  
11 who are in court with us today. There's 13 members of  
12 Mr. Sylla's friends and extended family -- sorry, members  
13 of his extended family and his friends, his father, his  
14 cousin, who wrote letters with our assistance. They're  
15 not literate people. They're from Africa and they're  
16 immigrants, are here with us. His child, his common-law  
17 wife are here with us and have been with us through much  
18 of these proceedings and are supporting Mr. Sylla  
19 throughout this.

20           I want to -- I had the opportunity to see what  
21 the Court's general comments about the guidelines on  
22 ivory importation in the other sentencings and I do want  
23 to say one or two words in response to that view. I hope  
24 I won't be directly contradicting it but I think that  
25 there's one or two points to be made on that.

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1 I basically agree with your Honor and with  
2 Judge Buchwald that the idea of sentencing based on the  
3 dollar value of the ivory doesn't really capture the harm  
4 to the environment, to elephants that is sought to be  
5 captured by the guideline. I actually I don't think  
6 that's -- I think that's probably right and the way I see  
7 it though is that really what the harm is, is the  
8 quantity of ivory that's taken that means -- translates  
9 to elephants killed and that that's what should be looked  
10 at, the way we look at the quantity of drugs because, you  
11 know -- and different drugs we look at differently. You  
12 know, crack hurts people more than powder and therefore  
13 it's -- there's a ratio between crack and powder cocaine.  
14 Child pornography hurts people; the more images you have,  
15 the more children you've hurt.

16 Ivory, the more you have, the more elephants  
17 you've hurt and really what we should be looking at is  
18 the amount of ivory that was dealt in, that was traded,  
19 that was smuggled. But again, Mr. Sylla is a stepped  
20 removed from that because he didn't smuggle the ivory.  
21 What he did was he traded and smuggled ivory.

22 The anomaly is really brought out -- and I made  
23 this point in the footnote but I want to emphasize it.  
24 In looking at how the ivory -- the statute -- the  
25 Wildlife statute incorporates the loss tables from the

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1 fraud statute. Now the loss tables were increased  
2 dramatically in 2001 in response to Enron and the other  
3 financial scandals. But not with any thought given at  
4 all to the affect on other -- on other guidelines.

5           So, you have this increase because of Enron  
6 because we want to punish white collar fraud more harshly  
7 but it just sort of is a happenstance that that increase  
8 by, you know, a large percentage, three levels to  
9 something like 30 or 50 percent increase in the guideline  
10 sentence without any thought, any empirical study, no  
11 reason for it except that it's a matter of administrative  
12 convenience.

13           THE COURT: May I just --

14           MR. MARGULIS-OHNUMA: I mean, it --

15           THE COURT: -- address that --

16           MR. MARGULIS-OHNUMA: Sure.

17           THE COURT: -- befor you go any further? We  
18 have applied not those enhanced guidelines. We've  
19 applied the earlier guidelines. So, I know that you've  
20 spent some ink on that argument in your submission and  
21 the point that I wanted you to understand is we're not  
22 applying that enhanced guideline. We're applying the  
23 guideline that was in effect during Mr. Sylla's offense.

24           MR. MARGULIS-OHNUMA: But the increase I'm  
25 talking about is in 2001, the three level increase in the

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1 fraud table.

2 THE COURT: Oh, all right.

3 MR. MARGULIS-OHNUMA: So, I would be glad to go  
4 back --

5 THE COURT: I guess your footnote said 20-  
6 something, 2010. Maybe it was a typo.

7 MR. MARGULIS-OHNUMA: Uh --

8 THE COURT: All right.

9 MR. MARGULIS-OHNUMA: It's on page 21, footnote  
10 7 of my sentencing memo. There are other specific  
11 increases before that as well in the late '90s. But that  
12 increase would -- I mean, that increase would -- I mean,  
13 that would be a level -- a three-increase level. Let me  
14 -- I'll pull it up on file to make sure we're on the same  
15 page.

16 THE COURT: Oh, I see. Okay.

17 MR. MARGULIS-OHNUMA: The other anomaly here,  
18 your Honor, that makes the quantity of ivory a better  
19 proxy for the harm -- sorry.

20 THE COURT: No, go ahead. I'm listening.

21 MR. MARGULIS-OHNUMA: -- is that the quality of  
22 the artwork made from ivory that Mr. Sylla traded in my  
23 view, is fairly high but the value of it was driven by  
24 the quality of the carving, not by the quantity of the  
25 ivory. And I think we've heard some of that from the



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1 appraiser that if it was, you know -- I think at one  
2 point he said this is some of the nicest work he's ever  
3 seen. So, when he's valuing something at thousands of  
4 dollars, that's not the value of the raw ivory. That's  
5 the value of the raw ivory plus the quality of the  
6 carving, which is also anomalous. I mean, that has  
7 nothing to do with how many elephants are hurt.

8 THE COURT: Well, at least one judge has  
9 assigned a value of \$150,000 per slaughtered elephant.  
10 So, you know, I think that if we use that valuation as  
11 some judges have, that would draw up Mr. Sylla's amounts  
12 far higher than they are under the valuation methods that  
13 were used in this case.

14 MR. MARGULIS-OHNUMA: Well, respectfully, your  
15 Honor, I mean that would require the government proving  
16 up the quantity of ivory which has never been done. It's  
17 been sort of ignored. We've been looking only at the  
18 money and I don't -- and I agree with what you said that  
19 that's not -- looking at the money is not the right way  
20 to go about this. It should be looked at the quantity of  
21 ivory overall.

22 The other sort of more specific disagreement I  
23 had in terms of which valuation to use, whether to use a  
24 valuation for antique ivory or the valuation that a  
25 knowing buyer would have. If I understood correctly,

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1 what's happened in other cases, is the Court gave some  
2 credence to the idea that the antique value, what it  
3 would be worth if it were a real piece, an old piece,  
4 should be given at least some deference.

5 In this case, with Mr. Sylla, I don't think  
6 there's any evidence that he somehow misrepresented what  
7 he was selling to anybody and therefore, I think -- and  
8 he was selling to sophisticated people, people who  
9 collected large amounts of ivory, people who were dealers  
10 in ivory, who had a storefront in Trenton, New Jersey,  
11 you might recall and that those people knew exactly what  
12 they were buying and that that --

13 THE COURT: What were they exactly buying?  
14 What is your contention that they knew they were buying  
15 antique ivory?

16 MR. MARGULIS-OHNUMA: No, that it was not  
17 antique ivory.

18 THE COURT: Okay.

19 MR. MARGULIS-OHNUMA: And they knew they were  
20 buying --

21 THE COURT: Because --

22 MR. MARGULIS-OHNUMA: They knew they were  
23 buying smuggled modern tourist ivory.

24 THE COURT: So, even if they said they thought  
25 it was old ivory or antique ivory, they knew better?

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1 MR. MARGULIS-OHNUMA: Well, I don't think they  
2 said that.

3 THE COURT: But antique ivory --

4 MR. MARGULIS-OHNUMA: They might have tried to  
5 pass it off to their customers as old but I don't think  
6 they said that they knew it was that they were buying  
7 something from Mr. Sylla that was -- there was no  
8 testimony about that at all.

9 And, therefore, I would suggest that the  
10 tourist market value is what should be used, not the  
11 antique value. So, those are some general --

12 THE COURT: When you say tourist market value,  
13 are you talking about the illegal market value?

14 MR. MARGULIS-OHNUMA: The value --

15 THE COURT: Because there isn't --

16 MR. MARGULIS-OHNUMA: Yeah.

17 THE COURT: -- really a legal market for ivory  
18 from what I understand unless it is antique and has  
19 proper certifications of antiquity. Otherwise, it's  
20 illegal to traffic in new ivory period. So, there's no  
21 legal new ivory market.

22 MR. MARGULIS-OHNUMA: I agree.

23 THE COURT: Right?

24 MR. MARGULIS-OHNUMA: But if someone --

25 THE COURT: So, the tourist market you're

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1 talking about is what?

2 MR. MARGULIS-OHNUMA: If someone believes that  
3 they are buying ivory -- that they know what they're  
4 buying, they know it's illegal but they're buying it  
5 anyway, they're not being ripped off by Mr. Sylla. That  
6 the price that they would pay under those circumstances  
7 -- and, in fact, the other -- the appraisal that the  
8 government submitted that the Court disregarded from the  
9 Hemingway Gallery gave the two values. They gave the --  
10 they said it would be fifty percent discounted if it were  
11 -- I forgot the term used, but market -- you know, modern  
12 -- recently carved versus the values that they gave were  
13 for antique value; right? The --

14 THE COURT: I think you argued though I should  
15 disregard that one, as well; right?

16 MR. MARGULIS-OHNUMA: Yes, I did. I did. I  
17 mean, but you know, if you're not going to accept part of  
18 my argument, I would suggest that -- if you're going to  
19 accept Oliver's, you might as well accept that.

20 And the basic point stands that the lower  
21 number should be used because Mr. Sylla never did  
22 anything to rip somebody off. I mean, he never  
23 misrepresented what he was selling as old ivory. It was  
24 what it was. There's no evidence that he represented it  
25 was anything else and he was selling to dealers. He was

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1 selling to people who knew this.

2 THE COURT: All right. The problem I have with  
3 the overall argument is that if I accept and every court  
4 accepts an illegal market value, it's going to perpetuate  
5 and continue to motivate folks to trade in illegal ivory  
6 because they'll get the benefit of a lower value at  
7 sentencing and the cost benefit analysis at the end of  
8 the day may be worth it to somebody to be held  
9 accountable for a lower value of illegal market rate  
10 ivory. I don't think courts should be doing that.

11 MR. MARGULIS-OHNUMA: Yeah, I understand that  
12 but it also punishes someone who misrepresents what  
13 they're selling more harshly than someone who is honest  
14 about what they're selling. So, if someone says look,  
15 this is an antique, buy it for me because, you know, it's  
16 worth so much because it's antique, that to me is more  
17 culpable conduct than saying look, you've know, I've got  
18 this ivory. It's beautiful. It's -- we just got it and  
19 it's recently carved. It just came in from Africa, you  
20 know. Buy it because you want it for -- I think Michael  
21 Oliver talked about decorators want this stuff. They  
22 don't care whether it's antique or not. They think it  
23 looks like. They think it feels nice because it's heavy.

24 So, I'm just suggesting that there's a  
25 difference in culpability between someone who

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1 misrepresents what they have --

2           THE COURT: But the statute doesn't -- I mean,  
3 the Lacey Act doesn't make a distinction between the  
4 intent of the seller or the trafficker or the smuggler,  
5 whether fraudulent or truthful representations. It's  
6 just illegal to trade in new ivory period. And it  
7 doesn't matter what representations are made in  
8 connection with that trade. Would you agree? Because  
9 the statute doesn't give any exceptions for someone who  
10 honestly says I'm selling or smuggling or importing  
11 illegal ivory.

12           MR. MARGULIS-OHNUMA: I would agree, your  
13 Honor, as a statutory matter. As far as the guidelines  
14 go, the guidelines --

15           THE COURT: And as a policy matter. As a  
16 statutory matter, as a policy matter and as looking at  
17 the intent of the trees and the regulations, it's to stop  
18 this trafficking, right?

19           MR. MARGULIS-OHNUMA: Right, but there has to  
20 be some relationship, your Honor, between the harm done  
21 and the cost to society of locking people up and I'm just  
22 suggesting and agreeing with you really that that is not  
23 ferreted out by looking at how much value of ivory was  
24 sold. It's ferreted out by looking at how much ivory was  
25 sold and bought.

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1           And in this case, it really wasn't very much  
2 and let me -- if I may, let me get to that. I submit to  
3 you, your Honor, that Mr. Sylla testified truthfully when  
4 he addressed the Court in the Fatico hearing. It's very  
5 unusual, as you know, for a defendant to testify and  
6 submit himself to cross-examination at a Fatico hearing.

7           As I said to you just now, I'm representing  
8 that Mr. Sylla has vehemently denied knowing what was in  
9 that March 2006 shipment from the moment I met him and he  
10 is not an articulate person. He has come an enormously  
11 long way in the two years that I've been working with him  
12 and the time leading up to the Fatico hearing.

13           He did not go to school. I mean, he went for a  
14 couple of years in Liberia and my fourth-grader's given  
15 presentations and I can't believe how well she's being  
16 trained to do that, you know, in talking to people in  
17 public. He doesn't really know how to do that. But we  
18 got him to a point where he was able to articulate. I  
19 didn't understand what he was saying about the March 2006  
20 shipment because he was aware of it, because there was  
21 scuttlebutt that the Fish and Wildlife Service had come  
22 and something had happened. And I didn't get what he was  
23 saying but ultimately, we were able to I think make it  
24 clear and his -- there may have been some little mistakes  
25 or whatever in his testimony, minor inaccuracies that the

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1 government seized upon but overall, it was credible.

2           And part of the reason we know it was credible,  
3 not only on its face, which is what I'm submitting but  
4 further, it was corroborated. The customs broker  
5 Fernando Peraja came in and told us that Kemo Sylla  
6 speaks English better than a lot of these guys and this  
7 his practice is to help out when there's  
8 miscommunication.

9           The -- it was corroborated by the statements of  
10 the person allegedly receiving that ivory. The person  
11 that ivory was sent to was Mr. Souare. The agents chose  
12 not to put the fact in the complaint that Souare said  
13 this has nothing to do with Sylla. He doesn't even know  
14 the person sending it.

15           But I think they should have and I think that  
16 they should have -- you know, I'm not sure where we would  
17 be now in this particular allegation. I asked the  
18 government to make Mr. Souare available. Apparently he's  
19 gone back to Africa. He wasn't available to tell us and,  
20 you know, find out exactly what happened. But he  
21 corroborates what Mr. Sylla said about that 2006  
22 transaction.

23           So, the notion from the get go that this guy,  
24 Kemo Sylla, is a big time ivory smuggler and has, you  
25 know, these big tens of thousands of dollars of



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1 shipments, is just -- it's just wrong and I'm sorry but  
2 the Fish and Wildlife Service seems to have believed that  
3 and, you know, they have a hard job and they work in good  
4 faith but I think they got it wrong in this case and I  
5 think that's what the evidence really bore out.

6           Another motive of corroboration was the letter  
7 that was accepted in evidence at the Fatico hearing from  
8 Robert Banks, who is a guy who did business with Mr.  
9 Sylla over the years and did business with people trying  
10 to sell him ivory over the years and he just said Kemo  
11 wasn't one of them. He wasn't buying ivory. Other  
12 people tried to sell them and Kemo was not trying to sell  
13 ivory.

14           Finally, the cooperator's testimony, I  
15 appreciate that you reviewed it all and I'll try not to  
16 say too much about it but I think that, you know, overall  
17 the circumstances of Mfopa Yacouba, of his relationship  
18 with Mr. Sylla which we admit to. We admit that we  
19 bought ivory from Mfopa Yacouba. But the allegation that  
20 they dealt directly together to arrange smuggling is just  
21 not born out by that testimony. It's not corroborated by  
22 any documents that you would expect to be there. It's  
23 not corroborated by any telephone records, by any direct  
24 contact and Mr. Yacouba in that situation had every  
25 motivation to lie and when he was challenged on the

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1 stand, as I'm sure you saw, he repeatedly contradicted  
2 himself. He was not a credible witness because the power  
3 relationship between the two of them is he's a prince of  
4 a village of hundreds of thousands of people. He's an  
5 international businessman. He had come to the United  
6 States three times a year for years and years and years.  
7 He claims he only took up ivory smuggling on the past two  
8 trips because of Kemo Sylla. It's just not believable.

9           Kemo Sylla is an illiterate refugee who came  
10 here as a very young man who was chased out of his home  
11 in Liberia, who was chased out of his home in Sierra  
12 Leone. He's here, you know, for the grace of God  
13 surviving these horrible wars in Africa. He's never had  
14 -- I mean, he does -- he is the signatory on his house  
15 but he's not someone who had employees. He's not someone  
16 who is sophisticated. He's not someone who is about to  
17 go push around Mfopa Yacouba and explain to him how to  
18 smuggle ivory. The testimony just doesn't stand up, I  
19 think when it's submitted to scrutiny.

20           And again, I'm sorry about that but it seems to  
21 have been pushed by this presupposition going back from  
22 the 2006 seizure that Kemo was somehow this big player  
23 and it's just not so.

24           Let me move on, your Honor, to -- well, let me  
25 round out what I'm saying overall about the nature and

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1 circumstances of the offense. In our view, Kemo Sylla  
2 traded over the years, several thousand dollars worth of  
3 ivory, perhaps eight or \$9,000 worth of ivory and he --  
4 that's illegal and he led guilty to it and he needs to be  
5 punished for it.

6 He's already done four months in prison and  
7 we're here to ask you or to urge you to find that the  
8 fourth months that he's already done has been sufficient  
9 punishment, ample punishment really, given the scope of  
10 the crime.

11 This is his first offense. He stands quite  
12 separately from the -- for example, Mamadi Doumbouya, who  
13 had been prosecuted twice before for Wildlife violations.

14 I'm going to move on now to the 3553(a) factors  
15 which whatever the guideline fine -- and yes, I think the  
16 guideline line puts you squarely in Zone A or Zone B, and  
17 that four months is a guideline sentence. But were you  
18 to find a higher guideline sentence, nonetheless we're  
19 requesting under 3553(a) and Booker, a non-guideline  
20 sentence of the four months time served and probation or  
21 whatever community service that you felt was -- would  
22 assist in that in achieving the goals of sentencing.

23 As I just mentioned, Mr. Sylla's a refugee.  
24 His history is exceptional. It's common for Liberians  
25 but it's exception for Americans and it's something

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1 that's hard for us, even to understand.

2 More importantly perhaps is he is the leader of  
3 a stable and beautiful, frankly, family, that's out  
4 there. He has a young child and he's the primary  
5 breadwinner for her. He lives with his common law wife  
6 and takes care of them. He sends money when he can to  
7 Africa.

8 The government started this case two years ago  
9 and they've been having a real hard look at Mr. Sylla in  
10 all that time. There's been no allegation in those more  
11 than two years, that he has somehow lapsed and tried to  
12 sell or buy ivory again. He understands he can't do  
13 that. He has no risk of recidivism.

14 He comes from a place that is so war torn and  
15 lawless and difficult to survive in that he really, I  
16 think, or than we can even imagine, respects the rule of  
17 law and honors it and realizes he did something wrong and  
18 that he's got to -- that he can't do that anymore. He's  
19 got to scrape by buying and selling art that is not  
20 ivory. And that's exactly what he is doing and the  
21 government offers nothing in the least to suggest  
22 otherwise in the last two years.

23 He is -- under 3553(a), the Court really has to  
24 make a -- do an assessment of how much deterrence is  
25 necessary and the cost to society and to the defendant of

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1 locking him up and what I would suggest to you and  
2 studies show this and I think I cited them and if I  
3 didn't, I'd be happy to, that what really deters conduct  
4 -- criminal conduct is not long sentences but the  
5 certainty that you're going to get caught because if you  
6 know you're going to get caught, you don't go and do it  
7 again.

8           He as caught and he was punished. I mean, he  
9 has been punished and he's being punished and through  
10 probation, he can be punished some more.

11           But in order to deter this going forward, the  
12 government has chosen not in their discretion -- not to  
13 prosecute Howard Henderson (ph.), Otis Williams (ph.),  
14 Clarice Sabree; people who were openly buying and selling  
15 ivory, people who were caught with large caches of ivory.  
16 I mean, I -- again, I hate to go down this road but it's  
17 Kemo Sylla is a poor African refugee. These people are  
18 American citizens and it's disturbing. If they want to -  
19 - if the goal is to dry up the market for ivory, Kemo  
20 Sylla didn't create the market for ivory, your Honor.  
21 Kemo Sylla exploited the market for ivory. He saw that  
22 there was an opportunity to buy and sell and make money  
23 from it and he did that.

24           But the end buyers, the people who look the  
25 other way, the Michael Oliver's customer he talked about,

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1 who are decorators, who are not prosecuted in this case,  
2 those are the ones creating a market for ivory. And in  
3 order to achieve some sort of balance, we have to say  
4 enough is enough. Four months in prison, you know, court  
5 appearances for over a period of two years, fines,  
6 probation, community service if that's appropriate, as I  
7 saw happen in another case, which I think is a great  
8 idea, is enough punishment to deter this kind of conduct  
9 at the level in which Kemo Sylla was engaging in it.

10 THE COURT: Just one point, Mr. Margulis-  
11 Ohnuma, I don't believe the Court can give credit for  
12 time in immigration custody. It's got to just be  
13 (indiscernible) --

14 MR. MARGULIS-OHNUMA: Right, so my request, I  
15 think he did --

16 THE COURT: -- what we're talking about is a  
17 month and two weeks, I believe, that he would be entitled  
18 to have credited against any offenses.

19 MR. MARGULIS-OHNUMA: I didn't do my homework  
20 on that. I'm sorry.

21 THE COURT: Okay. I think that from what I  
22 understand from the submissions before me, the arrest  
23 occurred December -- in December and he was released on  
24 bond.

25 MR. SINCLAIR: December 3, 2008.

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1           THE COURT: Yes, December. And he was released  
2 in February -- mid-February. December 3rd through  
3 January 15th; one month and twelve days. And the ICE  
4 custody was between February 25th -- I mean, up until he  
5 was just remanded to ICE and then stayed in ICE custody  
6 until February 25th. So, the credit that you're seeking  
7 is really the one month and twelve day.

8           MR. MARGULIS-OHNUMA: That's what I'm  
9 suggesting would be an appropriate punitive BOP sentence  
10 and part of the reason for that request, under 3553(a),  
11 is that he did additional time in ICE custody, which he  
12 would not have done but for this prosecution because he  
13 was already an asylum seeking refugee. He was already  
14 known to ICE and in the proceedings that he's in and  
15 protected by the DED program.

16           So, yes, I guess as a technical matter, I would  
17 be asking for the number of days that you just said; I'm  
18 sorry, I don't remember what it was, as the sentence and  
19 the rest to be considered under 3553(a).

20           Let me suggest also in ticking off the 3553(a)  
21 factors that I know the government doesn't agree with  
22 this but in comparison to the other defendants in this  
23 particular case, he is actually among the least  
24 sophisticated and the least culpable. That the others  
25 were older. They were more established.

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1           I mean, the most striking example of this is  
2 the one I mentioned already which was Mfopa Yacouba who  
3 is a prince and an international businessman with offices  
4 all over the world but the others also were people who  
5 had been art traders for a long amount of time. One of  
6 them, Mamadi Doumbouya had a prior criminal record in  
7 committing these very acts.

8           So, that his sentence -- Mr. Sylla's sentence  
9 should be closer to Drissa Diane's which was thirty days  
10 which would be squarely within what I'm asking for than  
11 it should be to the other co-defendants who are more  
12 sophisticated and more culpable. And, by the way, in  
13 certain cases, pleaded to actually smuggling as opposed  
14 to merely trading in smuggled ivory, which carries a  
15 twenty-year mandatory -- twenty-year maximum sentence as  
16 opposed to the five-year -- sorry, the five-year maximum  
17 sentence at issue here.

18           Let me just, in conclusion, say that putting  
19 Mr. Sylla in jail now is going to tear apart his family.  
20 It's a fragile family. He has learned his lesson. He  
21 hasn't recidivated. He has no intention of recidivating.  
22 And poses no danger to society.

23           He defended himself in court. He's had me  
24 advocating for him as vigorously as I could because  
25 that's what he directed me to do and that's what I felt



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1 the evidence fairly showed. He was -- has cooperated  
2 with the proceedings. He hasn't cooperated with the  
3 government but he's cooperated with the proceedings.  
4 He's made every court appearance. He's never violated  
5 probation.

6 Putting him in jail is just not necessary. It  
7 would be a needless cruelty to him and his family and  
8 there would be no benefit to deterrence at this time.  
9 Thank you very much,

10 THE COURT: All right. Thank you.

11 Did you want to be heard, Mr. Sinclair?

12 MR. SINCLAIR: Your Honor, briefly, I'd like to  
13 address some of the comments made by defense counsel and  
14 focus primarily on what this proceeding is not. This  
15 proceeding is not an indictment on the Fish and Wildlife  
16 Service. They've done nothing wrong here. There's been  
17 allegation that they've done nothing wrong. And to the  
18 extent that the Court -- that the defendant is asking the  
19 Court to consider some sort of nefarious conduct on the  
20 part of the government, the government strongly objects  
21 to that and to the extent the Court wishes to do that or  
22 is considering doing that, we would ask to be given  
23 notice of that. That's clearly not part of these  
24 proceedings here today.

25 THE COURT: No, I --

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1 MR. MARGULIS-OHNUMA: For the record, I agree  
2 with that, your Honor.

3 THE COURT: Okay.

4 MR. MARGULIS-OHNUMA: I'm not saying -- I'm  
5 saying they got it wrong. People makes mistakes. I'm  
6 not saying there was any nefarious conduct.

7 THE COURT: I believe that the Fish and Wildlife  
8 Service has acted in good faith and with integrity  
9 throughout these proceedings and throughout its  
10 investigation and I know that we had a lot of motions and  
11 hearings and everything and I have never been -- I've  
12 never doubted their good faith or their integrity. So,  
13 that's not what this is about.

14 MR. SINCLAIR: And another thing that this is  
15 not about, this is not about whether or not the defendant  
16 is a nebulous, big-time ivory seller. That's not a  
17 factor under the statute. It's not a factor in the  
18 guidelines. We certainly urge the Court to focus on the  
19 facts that have been established by a preponderance of  
20 the evidence at the Fatico hearing, including the  
21 defendants culpability in the March 2006 sale as detailed  
22 in our papers.

23 His conspiracy with Mfopa Yacouba and Seidou  
24 Mfomboutmoun to import illegally ivory into the United  
25 States as detailed in our papers and each of the domestic

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1 sales that the defendant consummated. And in large part,  
2 concedes to as part of his plea agreement here. That is  
3 what we ask the Court to focus on.

4           We ask the Court not to focus on the fact that  
5 the defendant has not recidivated in the course of the  
6 pendency of the case. Simple compliance with his bond  
7 conditions not to engage in any other criminal activity  
8 and abidance by the law is not something that the Court  
9 should consider in determining the leniency or the  
10 severity of a sentence here.

11           It is a neutral factor. It's irrelevant. He  
12 was abiding by the law because otherwise he would have  
13 been incarcerated for having broken the conditions of his  
14 bond.

15           We also ask the Court to ignore the illegal  
16 irrelevancy of the fact that some defendants in this case  
17 have pled guilty to smuggling and others have pled guilty  
18 to an ivory -- the Lacey Act. Whereas there is a twenty-  
19 year statutory maximum for smuggling and a five-year  
20 statutory maximum for the Lacey Act, that's a distinction  
21 without a difference. The Court ought to and we trust  
22 will focus on the conduct here which is the basis of the  
23 conviction and the punishment. Certainly the guideline  
24 calculations are exactly the same whether or not the plea  
25 was to an ivory smuggling conviction or a Lacey Act

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1 conviction. There's not a difference there.

2           The defendant mischaracterized the evidence at  
3 the Fatico hearing in statements before the Court today.  
4 With respect to the March 2006 shipment, trying to change  
5 the evidence as to whether or not the defendant's story  
6 is credible or not, defense counsel said that Mr. Peraja  
7 had testified at the Fatico hearing, that he recalls  
8 Sylla translating from English to the African languages.  
9 That's simply not the evidence. Peraja did testify that  
10 Sylla speaks English and that on occasion, he recalls  
11 some people calling to translate for other people but he  
12 did not recall Sylla ever calling to translate for other  
13 people and certainly he remembered nothing about the  
14 facts and circumstances of the March 2006 shipment.

15           The government urges the Court to consider the  
16 credible evidence here which is that the agents were able  
17 to interview Mr. Souare in English that day. That he  
18 spoke English to them, presumably he was also able to  
19 speak English to Peraja earlier that day and he would  
20 have called Peraja if he was the one controlling the  
21 shipment.

22           Based on the phone records and all of the other  
23 evidence that the government has submitted, it's our  
24 position that the defendant was responsible for that  
25 shipment. He was involved in the participation of that

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1 being imported into the United States and disseminated  
2 within the United States using the services of the  
3 Velocity company.

4 And, therefore, to the extent that the  
5 defendant urges the Court to find him akin to Mr. Sidime,  
6 it's not an accurate -- or Mr. Diane, rather. It's not  
7 an accurate comparison. There's far more evidence going  
8 back further in time with respect to this defendant's  
9 smuggling, illegal importation, and distribution of the  
10 ivory within the United States.

11 I'll remind the Court that when Judge Gershon  
12 was sentencing Mfopa Yacouba, Judge Gershon was  
13 considering simply the January 2008 shipment of  
14 approximately \$30,000 of ivory. At that time, the  
15 evidence was not available to Judge Gershon to consider  
16 Mfopa's previous trips into the United States, other than  
17 the baseline that what we were able to provide in terms  
18 of that there were trips.

19 And here, the defendant concedes that he has a  
20 relationship with Mfopa. In fact, we're trying to  
21 diminish the amount of ivory that he says. He concedes  
22 that he took Mfopa's ivory in September of 2007 and later  
23 sold it to Mr. Henderson here in the United States,  
24 thereby trying to diminish the market value of what he  
25 should be held accountable for based on Mfopa's

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1 statements.

2           The Court urges -- the government urges the  
3 Court to consider the full amount of the relationship  
4 with Mfopa as detailed by Mfopa in his deposition and  
5 outlined by the government in our papers. And further  
6 distinguishing this defendant from Mr. Diane is the fact  
7 that he managed other people, not just Mfopa, the prince  
8 to use the defendant's term, not that we have any  
9 evidence as to what that term means in the record and the  
10 government submits it's completely irrelevant term and to  
11 the extent the Court is willing to assign some third-  
12 grade definition of what the word prince means in today's  
13 society, we ask the Court to completely reject that and  
14 focus on what this defendant did with respect to other  
15 people which was arrange for Mfopa to travel to Africa to  
16 visit with the defendant's cousin in the Ivory Coast and  
17 to return to the United States with illegally imported  
18 Ivory.

19           This defendant also arranged for Alfa Jene  
20 (ph.), another third-party to go to Howard Henderson's  
21 house and consummate that sale. This, by the way, is a  
22 fact that the defendant denied in his early papers and  
23 only later came to admit that this was a sale that in  
24 fact he consummated.

25           And third, this defendant arranged Seidou

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1 Mfomboutmoun to act as an assistant in the distribution  
2 of ivory here in the United States.

3           Therefore, we urge the Court to assign a two  
4 point enhancement as we've outlined in our papers for the  
5 guidelines purposes but also in considering this  
6 defendant's actions as compared to other defendants in  
7 this case under 3553. He is more culpable. He as an  
8 organizer of the ivory trade in the United States. He  
9 was creating a market for ivory which causes the damages  
10 and it's the purpose of the protections under the  
11 statute. Therefore, we urge this Court to sentence the  
12 defendant high within these guidelines that we've  
13 determined that we've set forth in our papers. Thank  
14 you.

15           MR. MARGULIS-OHNUMA: I have three quick  
16 replies and they're really quick.

17           THE COURT: All right.

18           MR. MARGULIS-OHNUMA: I promise. The -- four  
19 actually, sorry. You know, the point I was making about  
20 recidivism, of course you're not supposed to break the  
21 law once you're arrested. The point is that they've had  
22 two years with a real hard look at him. He hasn't broken  
23 the law and that to the extent that the Court is  
24 concerned about deterrence -- that's important --  
25 specific deterrence is important but it's not a concern

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1 in this case because he's not going to go back to doing  
2 this. He's learned his lesson. And I think I almost  
3 heard the government concede that.

4           Number two, the government submits it's legally  
5 irrelevant, I guess under the sentencing guidelines,  
6 whether you plead guilty to smuggling or to a Lacey Act  
7 violation and I disagree and I think it's both legally  
8 and factually relevant. The government -- the DOJ  
9 guidelines stated the government is supposed to take a  
10 plea only to the highest readily provable charge.

11           The charge of smuggling against Kemo Sylla is  
12 not provable. They could not have taken it to a jury.  
13 We negotiated. We were ready for trial. When they  
14 dropped the smuggling charge, we took the plea. He never  
15 smuggled ivory.

16           Congress has found fit to determine that  
17 smuggling is in the range of zero to twenty years, as the  
18 other defendants who were ivory smugglers. Mfopa Yacouba  
19 is an ivory smuggler. That's what he does for a living.  
20 That's what he did the day he was caught. And that's  
21 what he's done at least twice before that he admitted to  
22 and I submit to you it is very likely that's what he did  
23 constantly on those three trips a year that he took to  
24 the United States.

25           That brings me to the point about the prince



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1 and the third grade definition. There was testimony.  
2 You've probably reviewed it much more recently than we  
3 have. He discussed what it meant to be a prince. He  
4 discussed that he was a leader of his people. He  
5 discussed that he had forty employees.

6 All of that was testified to. He is a totally  
7 different individual; an educated, worldly man as  
8 compared to Kemo Sylla which is relevant for two reasons,  
9 as Judge Gershon said, he's more culpable because he's a  
10 leader of the community and therefore, he has a higher  
11 responsibility to set a good example for people.

12 And secondly, it underlines his false  
13 testimony, I submit, that he was -- that Mr. Sylla taught  
14 him how to smuggle. He knew just where to go in Cameroon  
15 to get these patinas put on these pieces. Kemo Sylla  
16 didn't tell him any of that. He knew what to do because  
17 he's an ivory smuggler. Kemo Sylla is not an ivory  
18 smuggler.

19 Finally, also on the point about I think  
20 counsel said that we earlier denied the transaction with  
21 Alfa Jenna and Mr. Henderson and then we came around,  
22 once we were confronted with the evidence. That is  
23 inaccurate, your Honor.

24 We maintain denial that when Alfa sold ivory to  
25 Henderson, that was on his own account and the check was

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1 turned over as we said originally to Kemo, who cashed it  
2 for him and it was signed in Kemo's name. We admit to a  
3 separate transaction for \$2,000 from the ivory that was  
4 purchased from Mfopa Yacouba. It's a separate sale that  
5 has nothing to do with that particular check. We  
6 maintain that the check with Kemo's name on it was  
7 actually cashed for Alfa, if I have it correct.

8 That's it. Thank you for hearing me out.

9 THE COURT: All right. Anything else, Mr.  
10 Sinclair?

11 MR. SINCLAIR: There's just one other point  
12 that I would have made in my initial comments. I  
13 overlooked it in my notes. I apologize. But it has to  
14 do with the comparison to Mamadi Doumbouya. Obviously,  
15 the Court was influenced by the fact that he had prior  
16 interaction with the law and he knew that this was an  
17 offense and he'd been confronted with it.

18 We submit that there's an analogous circumstance  
19 for this particular defendant and it has to do with the  
20 March 2006 shipment. Even today in court, counsel  
21 acknowledged that Kemo was aware in March 2006 or  
22 thereafter, that the Fish and Wildlife Service somehow  
23 injected themselves into that shipment and seized that  
24 shipment.

25 So as of the time of that shipment coming into

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1 the United States, this defendant was aware of the fact  
2 that ivory smuggling is illegal in the United States and  
3 that it has law enforcement ramifications. This shipment  
4 was seized.

5           Nevertheless, he continued to engage in  
6 smuggling activities as proven by the government with  
7 Mfopa Yacouba and certainly even concededly he continued  
8 to engage in the sale of ivory that was imported into the  
9 United States.

10           So, just like Mamadi Doumbouya who received a  
11 more severe sentence than several other defendants in  
12 part because of his prior interaction with law  
13 enforcement and the provable knowledge that he had about  
14 the illegality of these activities, this defendant too  
15 knew that this type of activity was illegal as early as  
16 March 2006 and nevertheless continued to engage in that  
17 activity. And so, we ask that the Court also consider  
18 that in evaluating this defendant.

19           THE COURT: Thank you. Anything else, Mr.  
20 Margulis-Ohnuma?

21           MR. MARGULIS-OHNUMA: I'll bite my tongue, your  
22 Honor. Thank you.

23           THE COURT: Okay. And I appreciate notifying  
24 and identifying the family members and friends who are  
25 here in court. I just want to say to them that I have

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1 read their letters and I've appreciated hearing about  
2 Mr. Sylla and who he is and what he means to them and the  
3 background information which I do think is quite  
4 extraordinary. I mean, I think that whatever the  
5 situation, even amongst the other defendants in this  
6 case, Mr. Sylla did have a particularly horrific  
7 childhood in his -- not just in his native country of  
8 Liberia but throughout his childhood as he fled civil  
9 war. So, I acknowledge that and I appreciate the  
10 presence and support of his family and friends.

11 I note that the PSR calculated Mr. Sylla's total  
12 offense level to be a level 19, criminal history category  
13 of one. The government calculates Mr. Sylla's total  
14 offense level to be 17 with a criminal history category  
15 of one.

16 Now, the government had intended or at least  
17 indicated that it would move for the third point decrease  
18 for acceptance of responsibility, in addition to the one  
19 level reduction for global disposition. And if that were  
20 to be applied, rather than a level 17, we would end up  
21 with a level 16.

22 Is there any dispute about that, Mr. Sinclair?

23 MR. SINCLAIR: No, there isn't.

24 THE COURT: Okay. Now, Mr. Margulis-Ohnuma  
25 objects to Mr. Sylla being held accountable for a market

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1 value of anything more than \$10,000 and to the  
2 government's and the PSR's application of a two level  
3 aggravating role adjustment pursuant to advisory  
4 guideline 3b1.1(c) -- and I will address this in a moment  
5 -- I've heard extensively today from the parties, in  
6 addition to reading their submissions. Is there anything  
7 else anybody else wants to bring to my attention before  
8 we move forward?

9 MR. MARGULIS-OHNUMA: No, your Honor.

10 THE COURT: All right. The defense asks that  
11 the Court depart from the guidelines or impose a non-  
12 guideline sentence of time served. Now again, I think  
13 we've clarified that time served for purposes of this  
14 sentence would be one month and twelve days, not the  
15 three months that he's spent in ICE custody.

16 And he also posits that a one-year period of  
17 supervised release based on exceptional family  
18 circumstances and on the 3553(a) factors would be  
19 appropriate.

20 Mr. Ohnuma emphasizes that Mr. Sylla is the  
21 primary care giver of his six-year-old daughter and that  
22 his immediate and extended family do rely on him for  
23 financial support and that he is likely to be deported to  
24 Liberia if he receives a substantial sentence.

25 The government recommends a sentence within the

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1 guidelines arguing that a within guidelines sentence is  
2 necessary to address the seriousness of the crime, the  
3 need for specific and general deterrence and to avoid  
4 sentencing disparities.

5           The government also recommends imposing a fine  
6 payable to the Lacey Act Reward Fund pursuant to Title 16  
7 USC Section 3375(d) and 42 USC Section 10601(b)(1)(A)(2).

8           Now, I must first address the amount of ivory  
9 for which Mr. Sylla should be held accountable. It's a  
10 point of major contention between the parties. In order  
11 to make this determination, I must determine whether the  
12 government has proven by a preponderance of the evidence  
13 which of the specified instances of importation sale or  
14 offers for sale of ivory Mr. Sylla is responsible for and  
15 then second, the total market value of the ivory involved  
16 in those transactions.

17           First addressing which transactions Mr. Sylla  
18 should be held accountable for, I look at the arguments  
19 of the parties. First, the government argues that the  
20 credible evidence at the Fatico hearing established that  
21 Mr. Sylla is responsible for between \$159,800 to \$181,800  
22 worth of ivory that was illegally imported and then  
23 subsequently traded within the United States.

24           There was a bit, I think, of a change here. The  
25 government stated that Sylla was responsible for both

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1 \$149,200 and \$181,800 and also between \$144,000 --  
2 \$144,800 and \$177,400. That was in the government's  
3 January 20, 2011 letter at 2.

4 The Court does not believe that the sum of any  
5 of the figures that were provided by the government would  
6 amount to that much. Instead, the Court's calculation  
7 came up with a range between \$159,800 and \$181,000 based  
8 on the value presented in that particular submission.

9 The PSR calculated the market value attributable  
10 to Mr. Sylla to be \$204,400 before the Fatico hearing and  
11 the probation department has not indicated any change to  
12 its calculation following the Fatico hearing or based  
13 upon the government's more recent valuation.

14 The government bases its valuation on the three  
15 following instances of importation, sale or offer for  
16 sale. First, domestic sales of ivory valued between  
17 \$15,000 and \$17,000 and then the March 2006 shipment of  
18 ivory that was valued between \$76,500 and \$96,500 that  
19 Mr. Sylla allegedly participated in smuggling into the  
20 United States through Kemo Sekou Souare. And third,  
21 \$68,300 worth of ivory that Mr. Sylla allegedly Mfopa  
22 Yacouba to bring back from Africa. That's again based on  
23 the government's January 20th letter at page 2.

24 Mr. Sylla argues that he's only accountable for  
25 \$7,500 worth of ivory and that there's no evidence

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1 linking him to the other ivory transactions. I've  
2 considered the credible evidence presented at the Fatico  
3 hearing and by the parties and their submissions and I  
4 make the following findings of fact and conclusions of  
5 law.

6 First, with respect to Mr. Sylla's sale to  
7 Clarisse Sabri (ph.), Mr. Sylla admits that he sold  
8 twenty-two pieces of ivory to Clarisse Sabri for \$900. I  
9 accordingly find that he's responsible for \$900 from that  
10 sale.

11 Next, Mr. Sylla is -- there's a sale to  
12 Mr. Robert Banks which we've discussed a little bit  
13 today. He admits selling an ivory trumpet to Mr. Banks  
14 for \$300 but he argues that he believed that the trumpet  
15 was made of antique ivory over 100 years old and had no  
16 reason to believe that the ivory was illegally smuggled  
17 into the United States and thus, should not be held  
18 accountable. That's his October 1st letter at pages 9  
19 through 10.

20 Mr. Sylla did not expound on his assertion at  
21 either the Fatico hearing or in his submissions as to why  
22 he had that belief. Instead, he simply points to a  
23 letter from Mr. Banks which was admitted into evidence as  
24 Defendant's Exhibit J at the Fatico hearing stating that  
25 the ivory trumpet that Mr. Banks bought from Mr. Sylla



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1 was made of ivory over a hundred years old. But similar  
2 to Mr. Sylla, Mr. Banks does not reveal the basis for his  
3 belief that the statute was made of old ivory. Neither  
4 Mr. Sylla nor Mr. Banks indicate whether this was based  
5 on a hunch or their own personal inspection, a  
6 representation that was made by some person including  
7 Mr. Sylla or some other form of documentation.

8           The government points out that in order for the  
9 ivory trumpet to have been legally imported into the  
10 United States, a CITES license would have been required  
11 stating that the ivory was derived from a legal source.  
12 I don't know if that is the case, Mr. Sinclair, if that  
13 trumpet was imported into the United States before CITES  
14 was enacted or whether there would have been some other  
15 documentation required pre-CITES to import allegedly  
16 antique ivory.

17           MR. SINCLAIR: I --

18           THE COURT: Would you --

19           MR. SINCLAIR: The CITES treaty was enacted in  
20 1976 when the defendant was less than a year old. So, I  
21 don't know. I don't know the answer to that question. I  
22 know there wouldn't have been a CITES license because  
23 there was no such thing.

24           THE COURT: Okay.

25           MR. SINCLAIR: But I don't know what their would

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1 have been.

2 THE COURT: No, okay. All right. Well, in any  
3 event, Mr. Sylla has not shown any evidence of a CITES  
4 license or any other documentation of antiquity regarding  
5 this ivory trumpet. The government urges that given Mr.  
6 Sylla's demonstrated practice of receiving illegally  
7 smuggled ivory from Africa, the Court should not accept  
8 that more, Mr. Sylla's self-serving statement that the  
9 ivory was legitimate.

10 I note that neither party has offered evidence  
11 as to the actual age of the ivory trumpet or to evidence  
12 as to when it was brought into the United States.  
13 However, the absence of either a CITES license or any  
14 documentation of antiquity or some other evidence that  
15 the ivory trumpet had been legally imported into the  
16 United States coupled with Mr. Sylla's admitted knowledge  
17 of and participation in sales involving ivory that was  
18 altered to appear old, supports the view that the ivory  
19 trumpet was indeed illegally smuggled into the United  
20 States and that Mr. Sylla knew or at least turned a blind  
21 eye as to its illegal status in the United States.

22 There's ample evidence in the record that  
23 Mr. Sylla sold new ivory which was manipulated and  
24 altered to make the ivory appear old. Mr. Sylla concedes  
25 in his affidavit in connection with an admitted purchase

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1 of ivory from Mr. Yacouba in September 2007, that he knew  
2 the ivory was illegally smuggled into the United States  
3 when there are no documents for that ivory and when the  
4 ivory is recently brought into the country.

5 That was his affidavit attached to the October  
6 1st letter at paragraph 31 and he states, "I was aware  
7 that the ivory had been smuggled because there were no  
8 documents for it and Mr. Mfomboutmoun told me that Mr.  
9 Yacouba had just brought the pieces to the United States.

10 Now, Mr. Margulis-Ohnuma states in his September  
11 15, 2010 objections to the PSR that Mr. Sylla bought what  
12 he sold to Mr. Banks as old ivory at a flea market.  
13 Mr. Sylla testified that he also bought a Benin leopard  
14 that was seized at his house at a flea market.

15 In the latter case, Mr. Sylla testified at the  
16 Fatico hearing that he knew that the Benin leopard was  
17 made of new ivory, thus illegal ivory, and that therefore  
18 he could have surmised that it was illegally smuggled.  
19 He insisted that he thought that the ivory trumpet was  
20 old despite its provenance at a flea market in which he  
21 had testified he knew that illegal ivory trafficking  
22 occurred.

23 Additionally, in his affidavit, he admits that  
24 old pieces of ivory can still be illegally smuggled.  
25 That was at paragraph 19 of his affidavit.

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1           Based on these concessions and the lack of any  
2 documentation, legitimizing the ivory trumpet and the  
3 lack of any explanation as to why Mr. Sylla or Mr. Banks  
4 believed that the ivory was antique and in light of Mr.  
5 Sylla's admissions that he has traded in illegal ivory, I  
6 find that Mr. Sylla's statement that he had no reason to  
7 believe that the ivory trumpet was illegally smuggled  
8 into the United States is not credible. Accordingly, I  
9 find that Mr. Sylla is responsible for \$300 realized from  
10 the sale of that ivory trumpet.

11           Now, we have ivory tusks that were sold on  
12 behalf of Mr. Otis Williams for the amount of \$4,400.  
13 Mr. Sylla admits in his submissions and at the Fatico  
14 hearing that he brokered a sale of two ivory tusks on  
15 behalf of man named Otis Williams for \$4,400. As he did  
16 in connection with the ivory trumpet, Mr. Sylla again  
17 claims without supporting documentation or explanation  
18 that the tusks were old ivory. And for the same reasons  
19 previously stated, I find that these self-serving  
20 statements are not credible and that Mr. Sylla is  
21 responsible for the \$4,400 realized from the sale of  
22 those tusks.

23           Moreover, I heard credible evidence through  
24 Agent Alegranti at the Fatico hearing that Mr. Williams  
25 had purchased ivory from Mr. Sylla at least twelve times

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1 and purchased anywhere from between three to five pieces  
2 of ivory from Mr. Sylla on each of those twelve  
3 occasions.

4           Mr. Alegranti testified that one of those sales  
5 was of an ivory Benin leopard statute for which Mr.  
6 Williams paid Mr. Sylla \$3,000.

7           The government introduced evidence of a check in  
8 the amount of \$1,500 which Mr. Williams had explained to  
9 Mr. Alegranti represented the balance of the \$3,000 sale  
10 of the ivory leopard. Even though the government did not  
11 ask the Court to include the sale in the total domestic  
12 sales, I do find that there is a preponderance of  
13 evidence that Mr. Sylla sold a Benin leopard ivory  
14 statute to Mr. Williams for \$3,000 and I hold Mr. Sylla  
15 responsible for that sale in the amount of \$3,000. Now  
16 -- in addition to the ivory tusks for \$4,400 that he sold  
17 to Mr. Williams.

18           Now, there's a receipt for the sale of two  
19 coupled Baule, B-A-U-L-E, ivory for \$4,400. At the  
20 Fatico hearing, the government introduced evidence that  
21 Mr. Sylla sold ivory to an individual named Kaba Ibrahami  
22 -- well, I'm sorry, Ibrahima Kalil -- that's K-A-B-A I-B-  
23 R-A-H-I-M-A, last name K-A-L-I-L, for \$4,400.

24           Specifically, the government introduced into  
25 evidence as Government Exhibit GG, Mr. Kalil's business

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1 card which reads "Two couple Baule ivory from Kemo Sylla  
2 equals \$4,400." Defense counsel does not contest that  
3 Mr. Sylla should be found accountable for the market  
4 value of the sale, in any of his submissions.

5 Further, Mr. Sylla testified at the Fatico  
6 hearing that although he does not specifically remember  
7 selling ivory to Mr. Kalil, the sale represented on his  
8 card was separate from the \$4,400 sale of tusks to Mr. --  
9 on behalf of Mr. Williams. Accordingly, the Court finds  
10 that Mr. Sylla is responsible for the \$4,400 realized  
11 from the sale to Mr. Kalil of the Two couple Baule ivory  
12 pieces.

13 Next, we turn to Mr. Sylla's December 2007 sale  
14 to Howard Henderson. Mr. Sylla does admit that he sold  
15 ivory to Howard Henderson for \$2,000 in December 2007.  
16 However, he testified at the Fatico hearing and swore in  
17 his affidavit that the ivory he sold Mr. Henderson was  
18 one of the pieces that he purchased from Mr. Yacouba for  
19 a total of \$6,000 and that he knew this piece of ivory  
20 was illegally smuggled into the United States.

21 He argues that this ivory should not be double  
22 counted. The government asserts that the Court should  
23 disregard Mr. Sylla's self-serving and unreliable  
24 testimony and hold Mr. Sylla accountable for this \$2,000  
25 sale in addition to the value of the ivory that the

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1 government argues Mr. Yacouba smuggled into the United  
2 States at Mr. Sylla's direction.

3           The government points out that Mr. Sylla  
4 initially objected to the inclusion of the sale to Mr.  
5 Henderson in the PSR and argues that he only -- Mr. Sylla  
6 only addmitted to the sale as an attempt to explain away  
7 some of the market value associated with the ivory that  
8 Mr. Yacouba smuggled into the United States at his  
9 direction.

10           Whereas in the case of co-defendant Mr. Diane,  
11 there was proof that the pieces that Mr. Diane sold to an  
12 undercover agent came from a shipment that Mr. Diane was  
13 being held accountable for, here there is no proof either  
14 way whether or not the ivory that Mr. Sylla sold to  
15 Mr. Henderson originally came from Mr. Yacouba or from  
16 another source.

17           Accordingly, in order to avoid double counting  
18 and in an excess of caution, the Court will subtract  
19 \$2,000 from the total value that it does find that Mr.  
20 Sylla is responsible for as a result of his arrangements  
21 with Mr. Yacouba.

22           Now let's talk about the value of the ivory  
23 Benin leopard statue that was seized from Mr. Sylla's  
24 home at the time of his arrest. He does not dispute that  
25 he bought that statue and that the statue was made of

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1 smuggled ivory or that the value of the statue should be  
2 attributable to him. Mr. Sylla does, however, contest  
3 that the \$3,000 to \$5,000 appraisal value that Mr. Oliver  
4 gives to that leopard statute is inaccurate and  
5 unreliable and he argues instead that the \$600 price that  
6 he paid for the Benin leopard at the flea market is a  
7 closer approximation of the statue's true market value.

8           And here I address Mr. Sylla's arguments  
9 regarding market value and how the Court must grapple  
10 with assessing the value of this ivory. Now, advisory  
11 guideline 2q2.1(b)(3)(A)(2) directs that if the market  
12 value of the wildlife exceeded \$5,000, the Court is to  
13 increase by the number of levels from the table in the  
14 advisory guideline at 2b1.1B1. The commentary to Section  
15 2q2.1 explains that when information is readily  
16 available, market value under 2q2.1, 2q2.1(b)(3)(A)  
17 "shall be based on the fair market retail price" of the  
18 wildlife. However, it also counsels that where the fair  
19 market retail price is difficult to ascertain, the Court  
20 may make a reasonable estimate using any reliable  
21 information such as the reasonable replacement or  
22 restitution costs or the acquisition and preservation  
23 costs.

24           The commentary specifies that the market value  
25 may not be based on measurement of aesthetic loss. Now,



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1 I must make a reasonable estimate using reliable  
2 information available. Mr. Oliver provided the only  
3 evidence of the valuations of ivory in the record, except  
4 for one valuation by a Mr. Gaysford (ph.) which the Court  
5 does not find to be reliable.

6 As I found at the Fatico hearing, Mr. Oliver is  
7 an expert qualified to testify regarding the appraised  
8 value of African art including ivory and contrary to  
9 defense counsel's arguments, I find that Mr. Oliver's  
10 testimony was credible and his methods of valuation to be  
11 reliable based on his extensive experience in African  
12 art.

13 Mr. Oliver defines fair market value as the  
14 price that a willing and informed buyer would pay for an  
15 object to a seller who is not under duress where the  
16 buyer and seller are negotiating a sale in a legal market  
17 for ivory.

18 I accept Mr. Oliver's definition of fair market  
19 value because there's evidence in the record that the  
20 goal of ivory smugglers is to create pieces that look  
21 like legitimate or antique pieces that may be sold on the  
22 legal market such as at auction houses and art galleries.  
23 I acknowledge that a market for illegally imported ivory  
24 also does exist. However, I will not use the presumably  
25 lower illegal thieves market or illegal market value as a

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1 basis to determine market value or to set the ceiling on  
2 value in this case. To do so, as I've indicated earlier,  
3 would only fuel trafficking of elephant ivory and keep  
4 the illegal market alive if defendants could benefit from  
5 that lower value.

6 This is why when making findings as to the  
7 market value of ivory during the sentencing of Mr. Sylla  
8 and his co-defendants, I have accepted the price that the  
9 defendant offered to sell or actually sold ivory for as  
10 the fair market value, only where that price was the only  
11 evidence of market value available.

12 However, where there's credible expert testimony  
13 as to the market value of the ivory, in addition to the  
14 offer or sale price, and the offer or sale price  
15 conflicts with the expert's valuation range, I have  
16 accepted and will accept here the expert's valuation over  
17 the black market price or the price that the particular  
18 defendant may have negotiated for the reasons detailed  
19 above.

20 With these principles in mind, I turn back to  
21 the valuation of the Benin leopard statue. Mr. Oliver  
22 appraised the Benin leopard statue seized from  
23 Mr. Sylla's home to be worth between \$3,000 and \$5,000,  
24 which I find to be reliable. Mr. Alegranti, as I noted,  
25 credibly testified that Mr. Sylla sold a Benin leopard

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1 statue to Mr. Otis Williams for a total of \$3,000 and  
2 that provides further support for Mr. Oliver's valuation.

3 I accordingly find and using the conservative  
4 end of the estimate, that the \$3,000 assigned by  
5 Mr. Oliver's appraisal is reliable and find Mr. Sylla is  
6 accountable for the \$3,000 value.

7 Now, let's turn to the March 21, 2006 shipment  
8 which was another point of contention. The government  
9 seeks to hold Mr. Sylla accountable for the market value  
10 of ivory contained in the shipment which arrived at JFK  
11 on March 21, 2006 and was appraised by Mr. Oliver to be  
12 valued between \$76,500 and \$96,500.

13 The evidence at the Fatico hearing and in the  
14 submissions established the following: On March 18,  
15 2006, a shipment containing ivory disguised as wood  
16 carvings and containing other non-ivory artwork, let  
17 Ghana via British Airways and arrived at JFK on March 21,  
18 2006. The shipment was addressed to Mamadi Cisse, C-I-S-  
19 S-E, at the Chelsea Mini Storage. There was no evidence  
20 presented at the hearing that Mr. Cisse was ever located  
21 or is in fact a real person.

22 On March 24, 2006, agents from Fish and Wildlife  
23 met with the Customs broker, Fernando Peraja of Velocity  
24 freight Services to perform a controlled delivery of a  
25 shipment. Telephone records indicate calls between Mr.

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1 Sylla, Mr. Souare, the addressee -- I'm sorry, not the  
2 addressee, an individual known as Mr. Souare and  
3 Mr. Peraja. For example, Mr. Sylla had called Mr.  
4 Peraja's cell phone five times in connection with the  
5 shipment; once on March 18th, twice on March 22nd, once  
6 on March 23rd and once on March 24th inquiring about the  
7 shipment and directing that the delivery address be  
8 changed from Chelsea Mini Storage to a residential  
9 address at which Mr. Kramo, K-R-A-M-O, Seko, S-E-K-O,  
10 Souare, was present at the time of the delivery.

11           Indeed, Mr. Sylla's repeated calls to Velocity  
12 prompted a Velocity employee to write Mr. Sylla's name on  
13 the British Airways bill. That was Exhibit G and  
14 Mr. Sylla's phone records and Exhibit E, the airway bill  
15 in evidence.

16           Upon the delivery of the shipment to the address  
17 provided by Mr. Sylla, Mr. Souare and Mr. Lancine Conde  
18 (ph.) accepted the shipment on behalf of Mr. Cisse. Upon  
19 questioning by the Fish and Wildlife Service, apparently  
20 in English, Mr. Souare informed the agents that Mr. Cisse  
21 had asked Mr. Souare to accept the delivery for him and  
22 that earlier that day, Mr. Sylla had given Mr. Souare  
23 \$1,600 in cash that Mr. Souare needed to pay the shipping  
24 and freight expenses . Mr. Souare explained that Mr.  
25 Sylla owed him money for an unrelated debt and that Mr.

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1 Sylla had driven from New Jersey that morning to give Mr.  
2 Souare \$1,600 that he owed him.

3 Mr. Souare told law enforcement that Mr. Sylla  
4 was not receiving any part of the shipment. That Mr.  
5 Sylla did not know Mr. Cisse and that Mr. Sylla was in  
6 the country illegally.

7 Now consistent with Mr. Souare's statements to  
8 law enforcement, Mr. Sylla testified at the Fatico  
9 hearing that he owed Mr. Souare \$2,000 for ten wood  
10 carvings in an unrelated transaction. Mr. Souare told  
11 Mr. Sylla that he needed \$1,600 to pay for shipping costs  
12 and that Mr. Souare told Mr. Sylla further that if he  
13 paid Mr. Souare \$1,600 immediately, Mr. Souare would  
14 forgive the rest of that \$2,000 debt.

15 Mr. Souare -- I'm sorry, Mr. Sylla testified  
16 that the shipment did not belong to him and that he did  
17 not know there was ivory in the shipment. Contrary to  
18 Mr. Souare's statement, however, Mr. Sylla testified that  
19 he did not personally deliver the \$1,600 to Mr. Souare as  
20 Mr. Souare had told the Fish and Wildlife Service agents  
21 but rather, Mr. Sylla had sent a friend to deliver the  
22 money on his behalf.

23 Neither Mr. Sylla nor Mr. Souare offered any  
24 explanation as to why Mr. Souare would reduce Mr. Sylla's  
25 \$2,000 debt by \$400 to enable Mr. Souare to pay for a

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1 shipping fee for Mr. Cisse's shipment when Mr. Souare  
2 asserted that neither he nor Mr. Sylla had any interest  
3 in that shipment.

4           The evidence at the Fatico hearing revealed that  
5 in addition to the five calls Mr. Sylla made to Velocity  
6 between March 18th and March 24th, 2006, Mr. Sylla and  
7 Mr. Souare spoke twenty-two times between March 14th and  
8 March 25th, 2006. That was Government Exhibits G and H,  
9 the phone records of Mr. Sylla, first indicating ten  
10 calls for Mr. Sylla to Mr. Souare between March 14th and  
11 March 24th and Government Exhibit H indicating twenty-two  
12 calls from Mr. Souare to Mr. Sylla between March 17th and  
13 March 25th.

14           Mr. Sylla testified that he made these calls in  
15 order to help Mr. Souare arrange for the delivery because  
16 Mr. Souare did not speak English very well and could not  
17 understand what Mr. Peraja was saying. The government  
18 argues that Mr. Sylla's explanation for his reportedly  
19 legitimate involvement in the March 21, 2006 shipment is  
20 belied by the fact that Mr. Souare and Mr. Peraja speak  
21 English and the government argues that the fact that  
22 Mr. Sylla paid Mr. Souare the exact amount of shipping  
23 charges on the day of the shipment's arrival is just too  
24 coincidental to be credible.

25           The government also argues that the temporal

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1 proximity of the calls between Mr. Sylla and Mr. Souare  
2 to the shipment from Ghana, in addition to the number and  
3 sequence of calls between Mr. Sylla, Mr. Souare and a  
4 phone call that Mr. Sylla made with an African calling  
5 card, all suggest that Mr. Sylla knowingly participated  
6 in the importation of the March 21st ivory shipment into  
7 the United States.

8           Defense counsel on the other hand, argues that  
9 the evidence presented by the government is insufficient  
10 to link Mr. Sylla to the March 21st, '06 shipment and  
11 notes that it's the government's burden to prove by a  
12 preponderance of evidence that he is connected to that  
13 shipment.

14           Specifically, Mr. Margulis-Ohnuma points out  
15 that Mr. Peraja corroborated Mr. Sylla's testimony, that  
16 Sylla helps other African consignees who don't speak  
17 English with shipping arrangements. And we did have some  
18 dispute about that today -- about that statement that  
19 Mr. Peraja rather said that, not Mr. Sylla in particular,  
20 but other folks involved in African art do sometimes  
21 assist one another with shipping related matters.

22           Mr. Ohnuma also points out that Mr. Souare told  
23 law enforcement that the shipment did not belong to  
24 Mr. Sylla and that Mr. Sylla testified that the \$1,600  
25 that he paid was for an unrelated debt. Mr. Margulis-

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1 Ohnuma also points out that Mr. Sylla has no family  
2 living in and has never visited Ghana and the shipments  
3 -- which was the shipment's place of origin.

4 Because Mr. Sylla's explanation of his  
5 connection to the shipment is corroborated by the  
6 testimony of Mr. Peraja and by most of the statements  
7 that Mr. Souare made to law enforcement, I will accept  
8 Mr. Sylla's explanation, notwithstanding the very curious  
9 coincidences that permeate this transaction linking  
10 Mr. Sylla in some way with the phone calls and the money  
11 for the delivery.

12 Accordingly, I do find that Mr. Sylla will not  
13 be held accountable for the market value of the ivory  
14 contained in the March 21, 2006 shipment.

15 Now, next, turning to the ivory imported by  
16 Mr. Yacouba. Cooperating witness, Mfopa Yacouba provided  
17 very detailed deposition testimony on March 10th and  
18 March 11, 2009, linking Mr. Sylla to a total of \$68,300  
19 worth of illegal importation purchase or sale of ivory.

20 Specifically, Mr. Yacouba testified that in  
21 January 2007, he met with Mr. Mfomboutmoun and Mr. Sylla  
22 and that Mr. Mfomboutmoun and Mr. Sylla showed him  
23 photographs of ivory carvings and art catalogues and  
24 asked him to go to the Ivory Coast to procure pieces of  
25 ivory and have them carved to resemble the pieces that



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1 appeared in the art catalogues.

2           Mr. Yacouba testified that Mr. Mfomboutmoun and  
3 Mr. Sylla told him that he should arrange to have the  
4 color of the ivory darkened to brown and to have clay or  
5 some other substance applied to the pieces to avoid  
6 detection by Customs officials. Mr. Yacouba testified  
7 that he did, in fact, bring ten ivory pieces into the  
8 United States via JFK Airport on March 29, 2007 and that  
9 Mr. Mfomboutmoun and Mr. Sylla met him in a hotel in New  
10 York City and paid him \$15,000 over the course of two  
11 days for those pieces of ivory. Mr. Yacouba testified  
12 that Mr. Mfomboutmoun and Mr. Sylla told him that they  
13 would buy more ivory from him in the future because they  
14 had customers who would buy it.

15           Mr. Yacouba testified that he returned to the  
16 United States again on September 7, 2007 with fifteen  
17 ivory pieces and that Mr. Mfomboutmoun and Mr. Sylla met  
18 him again in the same New York City hotel and paid him  
19 \$20,000 in cash for these pieces.

20           Now I note that Mr. Ohnuma has objected based  
21 among other things, on the hotel records not showing that  
22 Mr. Yacouba stayed at the Newton Hotel, which was the  
23 site that he testified to as the meetings that he had  
24 with Mr. Yacouba -- I mean, Mr. Mfomboutmoun and Mr.  
25 Sylla but I do also recall that there was evidence in the

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1 record that from time to time when the Newton Hotel had  
2 overflow, they would send travelers to other hotels and  
3 there was also a recognition that and evidence in the  
4 record that from time to time, one would not stay at a  
5 hotel under one's real name or use fictitious names in  
6 the trade -- in the ivory trade, both in shipping and  
7 importation.

8           During the September 7, 2007 meeting,  
9 Mr. Yacouba testified that the three men discussed making  
10 a third smuggling trip where Mr. Yacouba would travel to  
11 the Ivory Coast and meet with Mr. Sylla's cousin to bring  
12 back ivory pieces that Mr. Sylla had there.

13           Mr. Yacouba testified that Mr. Sylla showed him  
14 pictures of the ivory that he was to bring back and told  
15 him that he would pay \$5,000 for the pieces -- I'm sorry,  
16 that Mr. Sylla told him that he would pay \$5,000 for the  
17 pieces and in addition, Mr. Sylla paid him \$1,500 for the  
18 trip from Cameroon to the Ivory Coast.

19           Mr. Yacouba testified that Mr. Sylla later sent  
20 the same photographs of the ivory that he was to bring  
21 back to Mr. Yacouba after he returned to Africa. When  
22 Mr. Yacouba arrived in the Ivory Coast in November 2007,  
23 he testified that he called Mr. Mfomboutmoun and Mr.  
24 Sylla and they put him in touch with Mr. Sylla's cousin.

25           Mr. Yacouba testified that he took sixteen ivory

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1 pieces for Mr. Sylla from Mr. Sylla's cousin and that he  
2 bought five pieces of ivory at his own expense. He also  
3 testified that Mr. Sylla's cousin gave him two letters  
4 and a cassette for Mr. Sylla which were discussed with  
5 Mr. Yacouba and in evidence at the deposition.

6 Mr. Yacouba testified that when attempting to  
7 leave the Ivory Coast for Cameroon, he was stopped by  
8 Customs officials and was told that he must pay money if  
9 he wanted to leave the country with the ivory.

10 Mr. Yacouba testified that he then called  
11 Mr. Mfomboutmoun and Mr. Sylla to tell them about the  
12 situation and Mr. Yacouba further testified that when he  
13 spoke with Mr. Mfomboutmoun and Mr. Sylla, he did so two  
14 or three times between November 2007 and January 2008.

15 And during a December 2007 phone call, he told  
16 them that he had bought thirteen additional ivory pieces  
17 in addition to the five ivory pieces that he had  
18 purchased and that the price for those eighteen pieces  
19 that he bought would be \$30,000. And that Mr. Yacouba  
20 intended to sell those to Mr. Sylla and Mr. Mfomboutmoun  
21 when he returned to the United States.

22 Mr. Yacouba arrived in the United States in  
23 January 2008 and was arrested. The ivory pieces were  
24 seized from him and then later valued by Mr. Oliver to be  
25 worth \$31,800. When in MDC custody, Mr. Yacouba made

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1 phone calls to Mr. Mfomboutmoun without -- before  
2 Mr. Yacouba had any knowledge that the call was being  
3 recorded. Those phone calls corroborated the  
4 relationship between Mr. Yacouba and Mr. Mfomboutmoun and  
5 Mr. Sylla.

6           Moreover, based on transcripts, Mr. Yacouba's  
7 wife consensually recorded a telephone conversation with  
8 Mr. Sylla which implicates Mr. Sylla in the illegal ivory  
9 importation scheme with Mr. Mfomboutmoun and Mr. Yacouba.

10           Mr. Sylla did concede at the hearing and his  
11 affidavit and in his submissions, that he met with Mr.  
12 Yacouba through Mr. Mfomboutmoun and that he paid Mr.  
13 Yacouba \$6,000 for three pieces of illegally smuggled  
14 ivory in September of 2007 which he then resold to his  
15 clients.

16           He admits that through Mr. Mfomboutmoun, he put  
17 Mr. Yacouba in touch with his nephew or cousin -- it's  
18 used interchangeably in his submissions -- who lives --

19           MR. MARGULIS-OHNUMA: Your Honor, that would be  
20 my error. It's nephew.

21           THE COURT: Nephew, okay.

22           MR. MARGULIS-OHNUMA: I was confused about  
23 cousin at some point.

24           THE COURT: All right. Okay. Well, anyway, he  
25 does admit that he put Mr. Mfomboutmoun in touch with his

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1 nephew who lives on the Ivory Coast. However, Mr. Sylla  
2 testified that he decided not to have Mr. Yacouba import  
3 what he calls his nephew's ivory because Mr. Sylla  
4 feared that because Mr. Yacouba was not coming directly  
5 back to the United States, the ivory would be ceased by  
6 Customs officials in Africa and that Mr. Sylla would be  
7 held responsible for the ivory that would be ceased that  
8 was taken or given by his nephew.

9           Mr. Sylla admits in his affidavit that if  
10 Mr. Yacouba had been coming directly to the United  
11 States, he would have asked Mr. Yacouba to smuggle the  
12 ivory from his nephew for him. Mr. Sylla maintains,  
13 however, that he ultimately did not ask Mr. Yacouba to  
14 bring the ivory into the United States and that the ivory  
15 pieces belonged to his nephew, not him.

16           Mr. Sylla denies all other transactions that  
17 Mr. Yacouba testified about and denies that he recruited  
18 Mr. Yacouba, instructed him on how and where to buy ivory  
19 or that he sent him to the Ivory Coast to bring back his  
20 ivory.

21           Defense counsel argues that the Court should not  
22 rely on Mr. Yacouba's testimony because Mr. Yacouba was a  
23 cooperating witness with a motive to lie in hopes of  
24 reducing his sixteen month sentence.

25           In support of this proposition, defense counsel

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1 points out that although Mr. Yacouba mentioned  
2 Mr. Mfomboutmoun, at the time of his arrest, he only  
3 implicated Mr. Sylla after he was sentenced and sought to  
4 cooperate.

5           Mr. Sylla also suggests that it is improbably  
6 that Mr. Yacouba, an international businessman, would  
7 have directed Mr. Sylla, who defense counsel describes as  
8 an impoverished and illiterate refugee and it is equally  
9 improbable that Mr. Sylla would have access to the amount  
10 of cash that Mr. Yacouba testified Mr. Sylla paid to him.

11           Defense counsel ultimately argues that  
12 Mr. Sylla's testimony is more credible than Mr.  
13 Yacouba's. Mr. Yacouba argues that Mr. Yacouba testimony  
14 is credible and is corroborated by his phone records,  
15 travel records, Mr. Mfomboutmoun's proffer statements,  
16 Mr. Sylla's bank records and Mr. Sylla himself.

17           Now, based on all of the evidence in the record  
18 before me, including my viewing of Mr. Yacouba's  
19 deposition testimony, I do find that his testimony was  
20 credible and I find that based on the details of  
21 Mr. Yacouba's testimony, and that on the corroborating  
22 evidence of those details, that Mr. Sylla in conjunction  
23 with Mr. Mfomboutmoun, worked with Mr. Yacouba to smuggle  
24 ivory into the United States in March and September of  
25 2007 and in January of 2008. And that Mr. Sylla paid

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1 additional monies to Mr. Yacouba in the amount of \$1,500  
2 to retrieve ivory for him in the Ivory Coast.

3           Furthermore, I find that Mr. Oliver's valuation  
4 of ivory that Mr. Yacouba smuggled into the United States  
5 in January 2008 to be a reliable valuation. Despite the  
6 fact that I previously did find Mr. Oliver qualified to  
7 appraise African art, defense counsel nonetheless  
8 continues to argue that Mr. Oliver is not qualified to do  
9 so. Defense counsel alternatively argues that if  
10 Mr. Oliver is qualified, his appraisals are unreliable  
11 because, for example, Mr. Oliver appraised ivory covered  
12 by mud or resin. He could only provide data of a few  
13 comparable sales, that he based his appraisal on retail  
14 market instead of wholesale market value and that -- and  
15 on the offer price and not on the actual sales price.

16           I've considered Mr. Ohnuma's arguments but I  
17 find that the \$31,800 value that Mr. Oliver appraised for  
18 the ivory pieces seized at the time of Mr. Yacouba's  
19 arrest to be reliable for the following reasons:

20           First, Mr. Oliver testified at the Fatico  
21 hearing that he assesses the value of particular pieces  
22 of ivory by considering its carry or its beauty or its  
23 patina or color, the finesse and detail of the carving  
24 and its size. And that he is familiar with the origin of  
25 ivory statues and the concealment methods used by ivory

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1 smugglers.

2           Mr. Oliver testified that he was able to  
3 personally inspect each of the ivory pieces that  
4 Mr. Yacouba brought to the United States in January 2008  
5 and that he was able to hold the pieces and view the  
6 ivory's color and patina when possible and that he noted  
7 many of the pieces revealed corroborating evidence of the  
8 dirt or binding mixture that Mr. Yacouba testified that  
9 he was instructed to have applied to disguise the pieces  
10 to either hide the fact that they were ivory and to look  
11 more like wood or clay.

12           Although Mr. Oliver admitted that evaluating  
13 ivory covered in resin provided some impediments to his  
14 appraisal, Mr. Oliver testified that he could still  
15 reliably evaluate the ivory pieces based on their  
16 appearance through the resin and their size.

17           Moreover, I agree with Judge Gershon's  
18 observation in sentencing Mr. Mfopa Yacouba, that the  
19 difficulty in determining their fair market value, which  
20 valuation may include an assessment of the condition and  
21 the artistic quality of the ivory, ignores the important  
22 purpose of the enforcement statutes which is to protect  
23 from destruction and slaughter the elephants,  
24 individually and as an endangered species and that those  
25 tusks are taken only after the elephant is killed.



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1           The defendant should not enjoy the benefit of  
2 the deliberate concealment and staining used by ivory  
3 smugglers to evade detection by law enforcement in  
4 assessing a reliable valuation.

5           Thus, defendant's argument that the values  
6 assigned to the ivory are unreliable due to the  
7 deliberate concealment of the ivory under a resin matrix  
8 by the ivory smugglers should not redound to the benefit  
9 of the defendant.

10           Furthermore, Mr. Oliver explained that his  
11 appraisals are based on what he knows the ivory will be  
12 worth after they are cleaned and mounted and offered for  
13 sale in the retail market. It is clear from the record  
14 that a legitimate retail market is the exact market that  
15 Mr. Sylla was targeting by procuring pieces carved to  
16 look like ivory pieces sold in the catalogues and art  
17 galleries and auction houses and that he used this market  
18 to set his prices.

19           Further, there's no evidence that there's any  
20 impediment to cleaning the resin off the ivory that would  
21 prevent it from being sold in a retail market.

22           Further, defense counsel's argument that  
23 Mr. Oliver offers very little comparable sales data, some  
24 of which includes the price that ivory is offered for  
25 sale does not make Mr. Oliver's appraisals unreliable.

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1 As discussed previously, the sentencing guidelines direct  
2 the Court to make a reasonable estimate using any  
3 reliable information and Mr. Oliver presented reliable  
4 estimates based upon the reality that there are very few  
5 historical sales of legitimate pieces of ivory, let alone  
6 historical sales of smuggled ivory.

7 Finally, the Court declines to apply the twenty  
8 percent discount to Mr. Oliver's appraisals urged by  
9 defense counsel for the reasons that I just stated. I  
10 note that the ten percent discount that I applied to  
11 Mr. Oliver's appraisals in Mr. Diane's and Mr.  
12 Doumbouya's sentencings, is not applicable here because  
13 in the case of Mr. Diane and Mr. Doumbouya, Mr. Oliver  
14 was only able to appraise the ivory based on photographs  
15 whereas here, he was able to personally inspect the ivory  
16 that was imported in January 2008.

17 Also, I think there was some concern raised by  
18 Mr. Ohnuma that the appraisal value included the wood  
19 carvings, the non-ivory carvings in that shipment and  
20 looking back at Mr. Oliver's appraisal of that shipment,  
21 he specifically broke apart and appraised separately,  
22 objects made of ivory and objects made of wood. And the  
23 Court's calculations and evaluations that Mr. Oliver gave  
24 to the ivory pieces were only from ivory. So, Mr. Sylla  
25 is not being charged for wood carvings.

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1           Accordingly, I find that Mr. Sylla is  
2 accountable for a total value of \$68,300 worth of ivory  
3 that he imported, purchased and sold with Mr. Yacouba.  
4 This is based on the addition of \$10,000 paid to  
5 Mr. Yacouba in March 2007, plus \$20,000 paid to  
6 Mr. Yacouba in September 2007, plus \$1,500 paid to Mr.  
7 Yacouba to retrieve Mr. Sylla's ivory from the Ivory  
8 Coast, plus \$31,800 of the thirty-six pieces seized --  
9 I'm sorry, these are -- there was some discrepancy  
10 regarding tops of pieces but the bottom line is the total  
11 value and each of the pieces detailed in Mr. Oliver's  
12 March 25th appraisal amounted to \$31,800 and those were  
13 the pieces seized and inspected by Mr. Oliver from  
14 Mr. Yacouba's January '08 arrest and seizure.

15           In total, Mr. Sylla is accountable for \$16,000  
16 in domestic sales of ivory and that's calculated as \$900  
17 for the pieces of ivory sold to Clarice Sabree, \$300 for  
18 the sale of the ivory trumpet to Robert Banks, \$3,000 for  
19 the ivory value of the Benin leopard statue, \$4,400 for  
20 the sale of two ivory tusks on behalf of Otis Williams,  
21 \$3,000 for the sale of the ivory Benin leopard statue to  
22 Mr. Williams, \$4,000 -- I'm sorry, \$4,400 for the sale of  
23 two -- the two couple Baule ivory statue to Mr. Ibrahim  
24 and I did not add the \$2,000 sale to Howard Henderson in  
25 an attempt to avoid double counting because I am assuming

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1 that that \$2,00 sale is included in the imported amounts  
2 that Mr. Yacouba brought in.

3 MR. SINCLAIR: Your Honor?

4 THE COURT: I'm sorry?

5 MR. SINCLAIR: I was just going through your  
6 calculation.

7 THE COURT: Okay. I'm wrong?

8 MR. SINCLAIR: No, no. I don't know.

9 THE COURT: No, no, that's okay.

10 MR. SINCLAIR: I did not hear you including that  
11 amount, the \$3,000 for the leopard in his house. You  
12 included, I heard just now, one \$3,000 for the \$3,000  
13 sale of the leopard to Williams. I may have heard wrong.

14 THE COURT: Oh, you know what? Wait. I did. I  
15 did. I'm sorry. \$900 for the pieces of ivory sold to  
16 Clarice Sabree, \$300 for the sale of the ivory trumpet to  
17 Robert Banks, \$3,000 for the market value of the ivory  
18 leopard in his house -- I'm sorry, I should have said  
19 that -- made that clearer and then another \$3,000 for the  
20 sale of a similar ivory Benin leopard to Mr. Williams,  
21 \$4,400 for the sale of two ivory tusks for Mr. Otis  
22 Williams and \$4,400 for the sale of the two couple Baule  
23 ivory statues to Mr. Ibrahim. And then not counting the  
24 \$2,000 sale to Mr. Henderson. Does that add up?

25 MR. SINCLAIR: That's what I understood from

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1 what the Court's findings have been so far; yes.

2 THE COURT: Okay. All right. I think the math  
3 is correct. We double-checked it a couple of times. So,  
4 all right. Now --

5 MR. MARGULIS-OHNUMA: Sorry. So, that total  
6 number of domestics comes to \$16,000?

7 THE COURT: Yes, \$16,000 domestic, \$68,300 for  
8 the transactions involving Mr. Yacouba, total \$84,300.

9 Now based on Mr. Sylla's financial profile and  
10 notwithstanding the fact that he owns a home, I find  
11 based on the PSR's information that Mr. Sylla cannot pay  
12 a fine.

13 I've given respectful consideration to the  
14 advisory guidelines and I compute Mr. Sylla's offense  
15 level as follows based on my findings:

16 For a violatiuon of Title 16 USC Section  
17 3372(a)(1), I've considered advsiory guideline 2q2.1(a)  
18 and that provides for a base offense level of six. A two  
19 level increase is applied pursuant to advisory guideline  
20 2q2.1(b)(1)(A) because the offense was committed for  
21 pecuniary gain.

22 Given what I have just found to be the market  
23 value of ivory attributable to Mr. Sylla for a total of  
24 \$8,000 -- I'm sorry, \$84,300, eight points are added. I  
25 make no adjustments for any human victims or obstruction

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1 of justice.

2           Now there is a dispute about the role of the  
3 offense. Both the probation department and the  
4 government seek a two level enhancement under advisory  
5 guideline 3b1.1(c) for defendant's role as an organizer,  
6 leader, manager or supervisor. The government argues  
7 that such an enhancement is warranted because  
8 Mr. Sylla provided Mr. Yacouba with directions on how to  
9 import ivory into the United States and what types of  
10 ivory to smuggle into the United States. And funded his  
11 trip to the Ivory Coast to retrieve ivory.

12           Second, that Mr. Sylla directed a man named Alfa  
13 Jenna to act as a courier for him by having Mr. Jenna  
14 sell ivory to Mr. Henderson and bring a check from  
15 Mr. Henderson to Mr. Sylla with a pay to the order line  
16 blank and subsequently filled in with Mr. Sylla's name.

17           Third, that Mr. Sylla directed co-defendant  
18 Mfomboutma.

19           Now in opposition, Mr. Sylla argues that it is  
20 not believable that Mr. Sylla managed someone of  
21 Mr. Yacouba's stature and negotiating a check for  
22 Mr. Jenna is insufficient to support a guideline  
23 enhancement.

24           I note here that the PSR did not recommend and I  
25 did not award a two level enhancement for Mr.

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1 Mfomboutmoun who is involved in all of the transactions  
2 with Mr. Sylla involving Mr. Yacouba.

3           Given the similarity with which Mr. Yacouba  
4 described his interactions, always together with  
5 Mr. Sylla and Mr. Mfomboutmoun, and the lack of evidence  
6 that Mr. Sylla led, organized, managed or supervised  
7 Mr. Mfomboutmoun, or even Mr. Yacouba, I find that  
8 awarding Mr. Sylla a role enhancement here would lead to  
9 a sentencing disparity.

10           Further, I find that there is not preponderant  
11 evidence as to the nature of the relationship between  
12 Mr. Sylla and Mr. Jenna or the circumstances that led to  
13 Mr. Jenna to and pick up a check for Mr. Sylla to warrant  
14 the instant role enhancement. There are a number of  
15 explanations that could account for that situation.

16           Mr. Sylla pleaded guilty and notified the  
17 government of his intention to do so in a timely manner,  
18 sparing the government the burden of preparing for trial.  
19 As was his right, though, he did ask the government to  
20 prove by a preponderance the involvement of Mr. Sylla in  
21 the various transactions and the value of those  
22 transactions.

23           Nonetheless, Mr. Sylla will receive a two level  
24 decrease plus the additional one level decrease that the  
25 government has agreed to. So, a total of three points

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1 off.

2 He also receives a one point deduction for the  
3 global disposition which was available to three of the  
4 defendants including Mr. Sylla.

5 Thus, we have a total offense level of twelve.  
6 I do not find any aggravating factors.

7 MR. SINCLAIR: Your Honor?

8 THE COURT: Yes.

9 MR. SINCLAIR: If I may be heard?

10 THE COURT: Yes, sir.

11 MR. SINCLAIR: In light of the Court's finding  
12 with respect to the Yacouba transactions, effectively the  
13 Court has found that the defendant perjured himself in  
14 the course of the Fatico hearing by denying any other  
15 involvement with the Yacouba transactions is contrary to  
16 what the Court's findings are and frankly, what the  
17 evidence established at trial. Therefore, the government  
18 under these circumstances moves the Court to add a two  
19 point enhancement for obstruction of justice as is  
20 contemplated by the guidelines.

21 MR. MARGULIS-OHNUMA: I am going to object to  
22 that, your Honor. He was --

23 THE COURT: You know, I'm not making a finding  
24 that Mr. Sylla perjured himself. What I'm saying is that  
25 I'm trying to weigh a preponderance and there is an



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1 explanation that Mr. Sylla offered at trial. I  
2 understand that he denies having smuggled ivory with  
3 Mr. Yacouba.

4 I did find Mr. Yacouba to be credible and I did  
5 find that the disparities or inconsistencies that  
6 Mr. Sylla's counsel argued for with respect to that  
7 testimony were not really of any significance or  
8 explainable. For example, I think that there was some  
9 focus on Mr. Yacouba's cross-examination where he wasn't  
10 sure what ivory masks belonged to him and what belonged  
11 to Mr. Sylla. But I believed in reading the full  
12 transcript, Mr. Yacouba was able to explain that, that  
13 they were packaged and in Mr. Yacouba's mind, some was  
14 from Mr. Sylla's, some was stuff that he intended to sell  
15 on his own and that those packages were -- they were  
16 similar in appearance and they were -- the packages were  
17 opened and that they were sort of put together and a year  
18 and a half after the seizure, Mr. Yacouba was unable to  
19 specifically say which particular mask was his and which  
20 was Mr. Sylla's. I did not think that that was a  
21 material base -- a material inconsistency or one that  
22 would warrant a finding that Mr. Yacouba was not  
23 credible.

24 But I am not finding that Mr. Sylla deliberately  
25 lied. He has an explanation and based on the

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1 preponderance and all the other credible information and  
2 evidence before me, I found in favor of the government on  
3 some of those disputed issues.

4 MR. SINCLAIR: Respectfully, it is a matter of  
5 he denied any additional contact with Yacouba which flies  
6 in the face of the proven facts and, you know, as the  
7 government has been arguing all along, and in light of  
8 the Court's findings today, to deny that he interacted  
9 with Yacouba, for purposes of the transactions, and to  
10 find that he did not lie on the stand is factually  
11 incompatible, your Honor, and --

12 THE COURT: Well, I think perjury is a crime and  
13 I think what you're asking me to find is that he perjured  
14 himself.

15 MR. SINCLAIR: No, for instance, the obstruction  
16 of justice enhancement is often times used if statements  
17 are made inconsistent with the probation department in  
18 the course of creating the PSR and that is more akin to  
19 what the government is seeking for the Court to find  
20 here.

21 With respect to the Court's fact finding mission  
22 in establishing what the guidelines are, the defendant  
23 presented a story that was false in light of the evidence  
24 and now in light of the Court's findings, it's  
25 necessarily false.

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1 MR. MARGULIS-OHNUMA: Your Honor?

2 MR. SINCLAIR: And so therefore, under these  
3 circumstances, an obstruction of justice enhancement  
4 should be found here.

5 MR. MARGULIS-OHNUMA: Your Honor, if I may?  
6 It's -- I mean, I think counsel's suggesting that it's  
7 necessary -- that because there's an inconsistently one  
8 is true and the other is necessarily false and that's  
9 just not so. I mean, first of all, it's only by a  
10 preponderance that you credited Yacouba's testimony.  
11 It's not beyond a reasonable doubt. And even in that  
12 case, repugnant verdicts are allowed to stand in many  
13 cases, contradictory verdicts are allowed to stand when  
14 it's beyond a reasonable doubt. In this case, it's only  
15 by a preponderance.

16 And it's -- I mean I have no choice but to  
17 accept your finding on that but it doesn't mean that it's  
18 so strong that it would prove perjury or prove a false  
19 statement to a preponderance by Mr. Sylla.

20 MR. SINCLAIR: Your Honor, the standard for all  
21 of the findings under the guidelines are by a  
22 preponderance --

23 MR. MARGULIS-OHNUMA: That's what I just said.

24 MR. SINCLAIR: -- to the extent -- and to the  
25 extent that the Court needs to find sufficient facts to

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1 find that there was an obstruction of justice, that too  
2 would be by a preponderance. Necessarily, given that you  
3 found -- the Court found that there's an inconsistency in  
4 this story, and the defendant took the stand and you  
5 found more than enough evidence to find that his story  
6 was inconsistent, thereby establishing the finding, the  
7 Court necessarily found that there's more -- that his  
8 story is inconsistent and that he has presented false  
9 information to the Court in the course of the fact  
10 finding mission.

11 That is -- and I don't have the guidelines in  
12 front of me. I see that the Court's reviewing what the  
13 guidelines say about this but I believe that it's within  
14 the ambit of the two point enhancement for obstruction of  
15 justice under them.

16 THE COURT: All right. Just for the record, the  
17 advisory guideline 3C1.1 regarding obstructing or  
18 impeding the administration of justice provides, "If (A)  
19 the defendant willfully obstructed or impeded, or  
20 attempted to obstruct or impede, the administration of  
21 justice with respect to the investigation, prosecution,  
22 or sentencing of the instant offense of conviction, and  
23 (B) the obstructive conduct related to (i) the  
24 defendant's offense of conviction and any relevant  
25 conduct; or (ii) a closely related offense, increase the

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1 offense level by 2 levels."

2 Right. Now, I note again, you know, as we all  
3 know these are advisory and I just -- I think what we're  
4 trying to get to ultimately is a sentence that will be  
5 appropriate, you know? That will be sufficient but not  
6 greater than necessary. And it is a difficult case and I  
7 understand that there was a lot of effort by both parts,  
8 which I am very grateful for, in presenting evidence and  
9 trying to assist the Court in coming to the right  
10 decision regarding what that sentence should be.

11 And I understand what the guidelines provide.  
12 Nonetheless, they are advisory and I am giving -- I'm  
13 going to calculate, even if I were to add that extra two  
14 point enhancement for obstruction, ultimately I would  
15 have the authority as we know, to give a sentence that is  
16 more or less severe, as long as I am within the range.

17 And I think that Mr. Sylla's personal situation  
18 does present a somewhat unique situation, not -- I'm not  
19 excusing it at all and I'm not diminishing the  
20 seriousness of it. But I think that 3553(a) does give me  
21 some latitude to consider other factors that will guide  
22 me toward an appropriate sentence in this case.

23 So, I certainly do understand the government's  
24 view that there was an affidavit that prompted the  
25 hearing and it was a request for a hearing and that had

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1 substantial time and effort by all parties in presenting  
2 evidence at that hearing and substantial work by  
3 everybody including the Fish and Wildlife agents and the  
4 experts that were retained. And I know that all the  
5 defense lawyers worked very hard to present evidence in  
6 that case.

7           It does seem to me that if I were to follow this  
8 guideline, it would require a two point enhancement for  
9 obstruction. Given my findings, which I stand by, given  
10 my observation of all of the witnesses, including  
11 Mr. Yacouba, but I will be going on from there to  
12 consider the sentence under the statute which I am  
13 required to do, as well. So, if we do add the two  
14 points, we are at a fourteen.

15           THE CLERK: So, you're going to grant it?

16           THE COURT: Yes, I'm going to grant -- I'm  
17 granting the obstruction enhancement.

18           Now, the presentence report indicates that  
19 Mr. Sylla has no prior criminal convictions other than  
20 the instant offense. So, his criminal history category  
21 is one under the advisory sentencing tables.

22           There are no open counts in the superseding  
23 information. And the indictment --

24           MR. SINCLAIR: Your Honor, there are two open  
25 counts in the underlying indictment and the government

## Proceedings

1 moves Counts 1 and 2 of the underlying indictment be  
2 moved to dismiss.

3 THE COURT: All right. We will dismiss Counts 1  
4 and 2 of the indictment, underlying superseding  
5 indictment.

6 MR. SINCLAIR: And that indictment is now  
7 dismissed in its entirety.

8 THE COURT: Okay. Thank you. Thanks for your  
9 guidance on that.

10 All right. I've next had to consider the  
11 sentencing options both under the advisory guidelines and  
12 the criminal code. So, under the statute, the maximum  
13 term of imprisonment for a violation of Title 16 USC  
14 Section 3372(a)(1) is five years. And that's pursuant to  
15 Section 3373(d)(1)(B).

16 Under the advisory guidelines, with the offense  
17 level of fourteen, and a criminal history category of  
18 one, we come to a range of fifteen to twenty-one months.

19 Okay. Bear with us. We're just going to make  
20 sure we're not using -- we're going to take just a couple  
21 of minutes.

22 (Off the record)

23 THE COURT: We're back on the record and my  
24 clerk is going to provide the guidelines that were  
25 effective in November 2008 and before. And if you look

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1 on the back page, with an adjusted offense level of  
2 fourteen and criminal history category of one, it results  
3 in a range of fifteen to twenty-one months, which is the  
4 current guideline, as well. And in addition, it is still  
5 a Zone B offense. So, nothing has changed substantively  
6 regarding the range.

7 MR. MARGULIS-OHNUMA: Your Honor, I was just  
8 checking the fraud table that you -- I thought you had  
9 mentioned it changed. Is that --

10 THE COURT: No, it was my mistake.

11 MR. MARGULIS-OHNUMA: I'm just double-checking.

12 THE COURT: Excuse me. I thought you were --  
13 you had referenced a 2010 date and we were using the  
14 2008 --

15 MR. MARGULIS-OHNUMA: Right.

16 THE COURT: -- which applies prior to that date.

17 MR. MARGULIS-OHNUMA: Okay. And I see the plus  
18 eight supported by your finding of the \$84,000 amount.  
19 So, that's -- I'm in agreement with that.

20 THE COURT: All right. In addition, the -- to  
21 the advisory guidelines which provide for a range of  
22 sentence between fifteen to twenty-one months, I next  
23 turn to supervised release which under the criminal code  
24 3583(a) and (b)(2) provides that if a term of  
25 imprisonment is imposed, supervised release shall not be



## Proceedings

1 more than three years and the advisory guideline provides  
2 for supervised release between two to three years, if a  
3 term of imprisonment is imposed.

4 Under the criminal code, Title 18 USC Section  
5 3561(a), and (c)(1), Mr. Sylla may be sentenced to  
6 probation for not less than one or more than five years.  
7 However, under the advisory guidelines because the  
8 minimum term is greater than six months, the defendant is  
9 not eligible for probation.

10 The fines under Title 18 USC Section 3571(b)(3),  
11 is \$250,000 and under the advisory guidelines it's  
12 between \$4,000 and \$40,000. However, as I previously  
13 noted, it does not appear that Mr. Sylla is able to pay a  
14 fine based on his financial circumstances.

15 I must impose and do impose a mandatory special  
16 assessment and in addition, there was a final order of  
17 forfeiture entered in January 12, 2011. Mr. Sylla is  
18 ordered -- was ordered and is ordered as part of this  
19 sentence to forfeit any property in which he has an  
20 interest and which was derived from the proceeds of the  
21 instant offense. There were pieces of ivory that were  
22 listed there and I believe there was other property  
23 including the rough cut diamonds, I believe, was there.

24 MR. SINCLAIR: That's correct, your Honor.

25 THE COURT: All right. But no automobile, as I

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1 recall.

2 MR. SINCLAIR: That is correct.

3 THE COURT: All right. Now, Mr. Sylla, I wish  
4 to advise you that do you have the right to appeal your  
5 sentence, subject to any waiver of your appellate rights.

6 Did he --

7 MR. MARGULIS-OHNUMA: There is a waiver, your  
8 Honor.

9 THE COURT: Yes, he did. There was a plea --

10 MR. SINCLAIR: There is an appeallate waiver and  
11 we've not yet addressed it.

12 THE COURT: There was a plea agreement in which  
13 he did make a waiver. However, it is not my place to  
14 determine the enforceability of that waiver. That's an  
15 issue for the appellate court.

16 You must file an appeal within fourteen days of  
17 judgment being entered and if you cannot afford to pay  
18 the cost of an appeal, you may apply for leave to do so  
19 without payment of a filing fee. And in addition, the  
20 clerk will prepare a notice of appeal if you request the  
21 clerk to do so.

22 And I trust that Mr. Ohnuma-Margulis would, if  
23 asked, represent Mr. Sylla on the appeal, if he chooses  
24 to exercise his right to appeal.

25 MR. MARGULIS-OHNUMA: Yes, your Honor.

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1 THE COURT: All right. Now do we have any  
2 issues regarding return of property or has that all been  
3 taken care of?

4 MR. SINCLAIR: I don't believe there are any  
5 outstanding issues.

6 MR. MARGULIS-OHNUMA: Yes, your Honor. The  
7 government's in possession of Mr. Sylla's passport, I  
8 think or the --

9 MR. SINCLAIR: Well, the Court is.

10 MR. MARGULIS-OHNUMA: Yes.

11 THE COURT: Yes, the Court will retain control  
12 until after any supervised release term is terminated or  
13 concluded.

14 MR. MARGULIS-OHNUMA: Well, in terms of property  
15 that was seized, it was -- we forfeit any interest in it,  
16 so no.

17 THE COURT: All right. Are there any other  
18 matters that I should consider before we move forward?

19 MR. SINCLAIR: Nothing further from the  
20 government, your Honor.

21 THE COURT: All right.

22 MR. MARGULIS-OHNUMA: Not from the defense, your  
23 Honor.

24 THE COURT: Now, as we know, I must also  
25 consider the 3553(a) factors under the criminal code,

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1 first with respect to the nature and circumstances of the  
2 offense and the history and characteristics of the  
3 defendant. I find that the nature of Mr. Sylla's  
4 offense, that is selling ivory that he knows to be  
5 imported illegally, that is ivory from the endangered  
6 African elephant, for financial gain is a very serious  
7 offense because it encourages the death of elephants, an  
8 endangered species, the poaching which results in harm to  
9 law enforcement and it heightens the risk of an  
10 endangered species.

11 In addition, as we've discussed earlier, there  
12 are adverse human impacts by the loss of an endangered  
13 species, especially the African elephant.

14 I have considered Mr. Sylla's family history and  
15 circumstances and find them to be very compelling and  
16 very sympathetic. Mr. Sylla was born January 9, 1976 in  
17 Liberia. The only child born to his young parents,  
18 Mohammed Sylla and Awa (ph.) Sylla. Mr. Sylla has four  
19 half-siblings and he was raised under very difficult  
20 economic circumstances where there was often not enough  
21 food for the family.

22 In addition, in 1989 when Mr. Sylla was only  
23 thirteen years old, his family had to flee for their  
24 lives to escape persecution and murder in Liberia. They  
25 lived in a refugee camp in Guinea and it was very

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1 difficult for the family to find work or to find  
2 sufficient food to sustain themselves.

3           Mr. Sylla's parents ended up separating and Mr.  
4 Sylla then lived with his father and paternal  
5 grandmother. In 1991, Mr. Sylla briefly traveled to  
6 Sierra Leone in the hope of obtaining work and sending  
7 money home to his family. However, he was forced to  
8 return to Guinea due to political unrest. And he also  
9 found that it was very difficult to pay the debt that he  
10 owed for his travel expenses to Sierra Leone.

11           In 1992, Mr. Sylla's father left the family --  
12 left Mr. Sylla and emigrated to the United States in  
13 order to escape the conditions in Guinea and in 1998, Mr.  
14 Sylla followed his father to the United States on a  
15 temporary work visa that he was able to procure as a  
16 refugee from Liberia.

17           Mr. Sylla resided since his arrival in Trenton,  
18 New Jersey and lived near his father. He maintains a  
19 close relationship with his father and lives close by.

20           Mr. Sylla was unable to be included on his  
21 father's asylum application but applied for asylum  
22 himself in 2004 as a Liberian refugee of Mandingo  
23 descent. In 2007, he also filed a request for a deferred  
24 enforced departure which provides certain Liberians with  
25 temporary protected status in the United States.

## Proceedings

1           Mr. Sylla keeps in close contact with his  
2 mother, grandmother and half sisters in Guinea and sends  
3 between \$50 to \$200 a month to them which is enough to  
4 feed them for one month. According to defense counsel's  
5 submissions, Mr. Sylla and his father who works as a  
6 delivery person are very close and together they send an  
7 additional \$50 to \$200 a month through their extended  
8 family in the United States to more than thirty extended  
9 family members in Guinea. They hold monthly family  
10 meetings to discuss ways that they can help their  
11 relatives.

12           Mr. Sylla is not married but he does have a six  
13 year old daughter with Whatta Bamba (ph.). Ms. Bamba,  
14 their daughter and Ms. Bamba's daughter from another  
15 relationship all reside in Mr. Sylla's home in Trenton,  
16 New Jersey, even though Mr. Sylla and Ms. Bamba no longer  
17 share a romantic relationship. Mr. Sylla is consistently  
18 described by his family and friends and Ms. Bamba as a  
19 wonderful father who has an extremely close relationship  
20 with his daughter and who plays an active role in her  
21 life. The letters submitted on his behalf detail the  
22 difficulty that Mr. Sylla's daughter has had coping with  
23 his arrest and initial detention.

24           Mr. Sylla also cares for and supports an eleven  
25 year old son who lives in Guinea and he does attempt to

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1 maintain contact. Mr. Sylla sends between \$50 and \$200 a  
2 month to his son and his son's mother and grandmother.

3 Mr. Sylla attended primary school in Liberia for  
4 four years and attended two months of secondary school in  
5 Guinea. Mr. Sylla is currently attending adult literacy  
6 classes once a week, although it's reported that he has  
7 become depressed and has difficulty concentrating at  
8 those classes.

9 Mr. Sylla owns and operates a hair braiding  
10 salon in Trenton, New Jersey and has two employees, one  
11 of whom is Ms. Bamba. The business earns between \$600  
12 and \$1,200 a month. Mr. Sylla had also been employed --  
13 self-employed as an African art dealer since 2003. In  
14 this capacity, Mr. Sylla sold hand carved wood and bronze  
15 carvings which he usually bought from wholesale dealers  
16 and sold to galleries and private clients. Because of  
17 the travel restrictions placed on him in connection with  
18 this offense, he has been unable to make money as an art  
19 dealer.

20 Prior to being an art dealer, Mr. Sylla worked  
21 as a handyman and a stock person with a Dollar Store and  
22 Walmart and before coming to the United States, he worked  
23 as a housekeeper, car washer and in diamond mines under  
24 very harsh conditions.

25 Mr. Sylla does not suffer from any mental or

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1 emotional health issues and is in good physical health  
2 and he has no history of drug use or alcohol consumption.

3           The PSR notes that he has compliant with all  
4 pretrial release conditions.

5           All of the letters submitted on Mr. Sylla's  
6 behalf describe him as a hard-working and generous  
7 person, an exceptional father who is trying to better  
8 himself, so that he can continue to provide for his  
9 family. The letters describe the difficulties of living  
10 in Africa and explain the financial support that  
11 Mr. Sylla provides, allows his relatives the basic  
12 necessities of food. The letters also ask the Court to  
13 give him a second chance.

14           Now under 3553(a)(2), the sentence that I impose  
15 must reflect the seriousness of the offense, promote  
16 respect for the law and provide just punishment, afford  
17 adequate deterrence to criminal conduct, protect the  
18 public from further crimes of the defendant and provide  
19 defendant with needed educational or vocational training,  
20 medical care or other correctional treatment in the most  
21 effective manner.

22           As previously discussed, the selling of ivory  
23 from endangered African elephants is a serious crime  
24 because of the necessity of slaughtering those endangered  
25 animals. The people who participate in the illegal ivory



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1 trade are incentivized by the slaughter of elephants and  
2 a profit to be made by trafficking in illegal ivory and  
3 they must be deterred.

4 Mr. Sylla's attorney emphasizes that Mr. Sylla  
5 has already been deterred by the three months he spent in  
6 detention, both in BOP custody and immigration custody,  
7 as well as the possibility of deportation, imminent  
8 separation from his daughter and his father and the loss  
9 of the life that he has built for himself here in the  
10 United States.

11 As the letters from Mr. Sylla's father and Ms.  
12 Bamba poignantly expressed, Mr. Sylla's immediate family  
13 in the United States and Guinea are financially dependent  
14 upon him. Notwithstanding his very sympathetic family  
15 circumstances, I am concerned that Mr. Sylla has engaged  
16 extensively in the illegal trafficking of ivory from the  
17 endangered African elephant.

18 Now I note that Mr. Sylla has requested a  
19 departure from the guidelines here and we discussed  
20 previously the factors that Mr. Ohnuma has asserted.

21 Under 3553(a)(3) and (4), I have also considered  
22 the kinds of sentences available and the sentencing  
23 ranges established under the applicable -- I'm sorry, the  
24 advisory guidelines for the applicable category of  
25 defendant. I've considered 3553(a)(5)'s policy

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1 statements and the need to avoid unwarranted sentencing  
2 disparities pursuant to 3553(a)(6), among defendants with  
3 similar records who have been found guilty of similar  
4 conduct.

5           Mr. Sylla has six co-defendants in this case.  
6 I've considered the conduct of each of Mr. Sylla's co-  
7 defendants, as well as the sentences of other defendants  
8 who have violated the Lacey Act by the sale of illegally  
9 imported African elephant ivory.

10           I find that Mr. Sylla is more culpable than the  
11 low to mid-level operatives in the ivory smuggling trade  
12 and sales that I have previously sentenced such as Mr.  
13 Diane, who I sentenced to one month in custody, three  
14 months of home confinement and a \$1,200 fine. And Mr.  
15 Sidime, who I sentenced to one month in custody and five  
16 months of home confinement. And Mr. Kone, who I  
17 sentenced to one year of probation and a \$1,200 fine.

18           All of these defendants imported, sold and  
19 transported significantly less ivory than Mr. Sylla over  
20 a shorter period of time. Instead, I find that Mr. Sylla  
21 is more similarly situated to Mr. Doumbouya who I  
22 sentenced to fourteen months in custody and to Mr.  
23 Mfomboutmoun, who I sentenced to ten months and twenty-  
24 seven days in custody, both of whom smuggled similar  
25 quantities of ivory over a similar period of time as

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1 Mr. Sylla.

2           After giving respectful consideration to the  
3 advisory sentencing guidelines, I will impose a sentence  
4 that falls below the advisory guideline range and is  
5 sufficient but not greater than necessary for punishment  
6 and deterrence and in doing so again, I take into  
7 consideration the very unique and difficult circumstances  
8 under which Mr. Sylla was raised. And again, I do not  
9 diminish in the least the seriousness of the offense or  
10 the magnitude of the offense.

11           I'm authorized and do find all of the facts  
12 appropriate for the sentence as follows:

13           I sentence Mr. Sylla to a sentence of ten months  
14 in custody with credit for the time served in BOP custody  
15 only; that is one month and twelve days. He does not  
16 receive credit under the law for the immigration custody.

17           I sentence him to three years of supervised  
18 release with a condition that Mr. Sylla serve sixty hours  
19 of community service for each year of supervised release,  
20 preferably with the Wildlife Conservation organization.

21 Mr. --

22           MR. SINCLAIR: Your Honor, I apologize for  
23 interrupting. Was it sixty or sixteen?

24           THE COURT: 6-0, sixty hours of community  
25 service for each of the three years of supervised

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1 release. So, 180 hours of community service, again  
2 preferably with a Wildlife organization because I do  
3 think it's important for Mr. Sylla to understand the need  
4 for wildlife conservation.

5 I also sentence him -- I also impose a condition  
6 that he shall not possess any firearm, ammunition or  
7 destructive device, that he must comply with forfeiture  
8 as ordered by the Court.

9 If he is deported, Mr. Sylla may not re-enter  
10 the United States illegally and he need not serve his  
11 supervised release term in the United States.

12 Mr. Sylla shall submit his person, residence,  
13 place of business, any vehicles or other premises under  
14 his control to a search by probation on the basis that  
15 the probation officer has a reasonable belief that  
16 contraband or evidence of a violation of the conditions  
17 of release may be found. The search must be conducted in  
18 a reasonable manner and at a reasonable time.

19 The defendant shall inform any other residents  
20 that the premises may be subject to search pursuant to  
21 this condition. Mr. Sylla will not be ordered to pay a  
22 fine. He must pay a \$100 special assessment without  
23 interest and he must criminal forfeit the items set forth  
24 in the final order of forfeiture and in his plea  
25 agreement. The final order of forfeiture is incorporated

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1 into this judgment.

2 I would like to set a surrender date for  
3 Mr. Sylla.

4 MR. MARGULIS-OHNUMA: He has no desire to  
5 prolong the proceeding. I think it's about six or eight  
6 weeks to designate him. We would also request a  
7 designation to Fort Dix, which is closest to his home, I  
8 think. Although it's a low, not a camp, it would  
9 facilitate visits with his family which is very important  
10 to him.

11 THE COURT: Well, I'm going to ask BOP to  
12 consider placing him at Fort Dix or another facility in  
13 this area that will facilitate family visits, all right?

14 MR. MARGULIS-OHNUMA: Yes.

15 THE COURT: I don't have the ability to tell  
16 them exactly where because I don't know what their  
17 situation is.

18 MR. MARGULIS-OHNUMA: Thanks.

19 MR. SINCLAIR: Your Honor, when describing the  
20 vicinity, I think that the defendant wants to be in the  
21 vicinity of Trenton, not Brooklyn.

22 MR. MARGULIS-OHNUMA: Yes, Trenton.

23 THE COURT: Oh.

24 MR. MARGULIS-OHNUMA: Right.

25 THE COURT: Okay. In the vicinity of Trenton,

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1 New Jersey.

2 MR. MARGULIS-OHNUMA: Right. I would have asked  
3 for Otisville if he were in New York.

4 THE COURT: Yes, okay. All right. So when you  
5 say as soon as possible, what would like to do?

6 MR. MARGULIS-OHNUMA: So, I mean I --

7 THE COURT: Should I have him surrender  
8 tomorrow?

9 MR. MARGULIS-OHNUMA: No, because then he won't  
10 be designated.

11 THE COURT: Okay.

12 MR. MARGULIS-OHNUMA: So --

13 THE COURT: Six to eight weeks --

14 MR. MARGULIS-OHNUMA: Six to eight; yeah.

15 THE COURT: -- after designation?

16 MR. MARGULIS-OHNUMA: No, after -- as soon as  
17 possible after designation which I think takes six or  
18 eight weeks.

19 THE COURT: Oh.

20 MR. MARGULIS-OHNUMA: But the government might  
21 have more information on that.

22 MR. SINCLAIR: So, maybe six weeks from today.

23

24 MR. MARGULIS-OHNUMA: Right, maybe eight weeks  
25 from today to be safe.

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1 THE COURT: All right.

2 MR. MARGULIS-OHNUMA: Because I don't want him  
3 to be shuttled around --

4 THE COURT: I understand.

5 MR. MARGULIS-OHNUMA: -- if he's not designated.

6

7 THE COURT: All right. Today is March 2nd.  
8 That would bring us to April 13th.

9 (Pause)

10 MR. MARGULIS-OHNUMA: Yes, your Honor, it's  
11 April 13th, is that what you said?

12 THE COURT: Let me just double-check. Six weeks  
13 is April 13th.

14 MR. MARGULIS-OHNUMA: Right.

15 THE COURT: Six weeks is April 13th. Do you want  
16 eight weeks?

17 MR. MARGULIS-OHNUMA: I need -- I think eight  
18 weeks is safer, just to give them a chance to designate  
19 him.

20 THE COURT: Do you want April 27th? Surrender  
21 on April 27th.

22 MR. MARGULIS-OHNUMA: Thank you, your Honor.

23 THE COURT: All right. To the facility  
24 designated by the BOP. And that would be by 12 noon.

25 MR. MARGULIS-OHNUMA: Yes, your Honor.

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1           THE COURT: And I will continue the conditions  
2 of release absent any objection or reason why I  
3 shouldn't.

4           MR. SINCLAIR: No objection.

5           THE COURT: All right. Thank you.

6           MR. MARGULIS-OHNUMA: Thank you, Judge.

7           THE COURT: Okay. We're adjourned.

8           MR. SINCLAIR: Thank you, your Honor.

9                       (Matter concluded)

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## C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this nd day of April, 2014.

  
Linda Ferrara

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